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RECEIVED
OCT 17 2007
TIME: 2:44 PM
T. Camacho
67-011

6 IN THE APPEAL OF
7
8 JMI MEDICAL SYSTEMS, INC.,
9
10 Appellant.

DOCKET NO. OPA-PA-07-011

DECLARATION OF GEORGE NEIL
P. VALDES IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

- 11 I, George Neil P. Valdes, do hereby declare and state as follows:
- 12 1. I am counsel for Appellant JMI Medical Systems, Inc. ("JMI") in the above-captioned
13 matter. I make this declaration from my personal knowledge and if called, could and would testify
14 competently thereto.
 - 15 2. Attached hereto as Exhibit "1" is a true and correct copy of Guam Memorial Hospital
16 Authority's ("GMHA") Bid Invitation and Award (Bid Invitation No. GMHA Bid 024-2007).
 - 17 3. Attached hereto as Exhibit "2" is a true and correct copy of Amendment #1 for
18 GMHA Bid 024-2007.
 - 19 4. Attached hereto as Exhibit "3" is a true and correct copy of Amendment #2 for
20 GMHA Bid 024-2007.
 - 21 5. Attached hereto as Exhibit "4" is a true and correct copy of an email message from
22 William Kando to PeterJohn Camacho dated November 1, 2007.
 - 23 6. Attached hereto as Exhibit "5" is a true and correct copy of an email message from
24 Bea Aquino to William Kando dated August 13, 2007.

COPY

1 7. Attached hereto as Exhibit "6" is a true and correct copy of Amendment #3 for
2 GMHA Bid 024-2007.

3 8. Attached hereto as Exhibit "7" is a true and correct copy of GMHA's Request for
4 Information Letter dated August 10, 2007.

5 9. Attached hereto as Exhibit "8" is a true and correct copy of JMI's response to
6 GMHA's Request for Information.

7 10. Attached hereto as Exhibit "9" is a true and correct copy of MedPharm's response to
8 GMHA's Request for Information.

9 11. Attached hereto as Exhibit "10" is a true and correct copy of a letter from Glenda
10 Pangelinan to PeterJohn Camacho dated August 14, 2007.

11 12. Attached hereto as Exhibit "11" is a true and correct copy of a letter from PeterJohn
12 Camacho to Rey Vega dated September 11, 2007.

13 13. Attached hereto as Exhibit "12" is a true and correct copy of a letter from Rey Vega to
14 PeterJohn Camacho dated September 13, 2007.

15 14. Attached hereto as Exhibit "13" is a true and correct copy of a letter from PeterJohn
16 Camacho to Rey Vega dated November 27, 2007.

17 15. Attached hereto as Exhibit "14" is a true and correct copy of page 44 from the
18 Deposition Transcript of Glenda Pangelinan's deposition.

19 16. Attached hereto as Exhibit "15" is a true and correct copy of a memo from Glenda
20 Pangelinan to Daniel Mantanane dated September 6, 2007.

21 17. Attached hereto as Exhibit "16" is a true and correct copy of a memo from John
22 Benavente to the GMHA Small Management Administrator dated September 10, 2007.

23 18. Attached hereto as Exhibit "17" is a true and correct copy of an email from Glenda
24 Pangelinan to Lola Pangelinan dated August 6, 2007.

19. Attached hereto as Exhibit "18" is a true and correct copy of an email from Glenda
Pangelinan to Lola Pangelinan dated July 9, 2007.

EXHIBIT “1”

**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.

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.

- (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 the time specified, the contractor shall be liable for damages for delay in the amount of two percent (2%) of the 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.

MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT

GOVERNMENT OF GUAM)

) ss.

AGANA, GUAM M.I.)

1. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the bidder or offeror, and that *[please check one]*:

The bidder or offeror is an individual or sole proprietor and owns the entire (100%) interest in the bidding or offering business.

The bidder or offeror is a corporation, partnership, joint venture, or association, and the persons, companies, partners, or joint venturers who have held more than (10%) of the shares or interest in the bidding or offering business during the 365 days immediately preceding the submission date are as follows *[if none, please so state]*:

NAME	ADDRESS	PERCENTAGE OF SHARES HELD
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTAL NUMBER OF SHARES		
_____	_____	_____

2. Persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid for which this Affidavit is submitted are as follows *[if none, please so state]*:

NAME	ADDRESS	Amount of Commission Gratuity or other Compensation
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. If the ownership of the bidding or offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5GCA § 5233 by making another affidavit.
Further, affiant sayeth naught.

Date: _____

Signature of: _____
Individual if bidder is a sole proprietorship;
Partner, if the bidder is a partnership;
Officer, if the bidder is a corporation.

Subscribed and sworn to before me
this _____ day of _____ 20____.

Notary Public

My Commission expires _____ 20____.

BID BOND

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS that _____ as Principal, hereinafter called the Principal, and (Bonding Company) _____ duly admitted insurer under the laws of the Government of Guam, as Surety, hereinafter called Surety are held and firmly bound unto the Government of Guam for the sum of _____ Dollars (\$ _____) for the payment of which sum will and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for (identify project by number and brief description) _____

NOW, THEREFORE, if the Government of Guam shall accept the bid of the Principal and the Principal shall enter into a Contract with the Government of Guam in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof, or in the event of the failure of the Principal to ensure such Contract and give such bond or bonds, if the Principal shall pay to the Government of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Government of Guam may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this _____ day of _____, 20____.

(WITNESS)

(TITLE)

(MAJOR OFFICER OF SURETY)

(TITLE)

(PRINCIPAL) (SEAL)

(MAJOR OFFICER OF SURETY)

(TITLE)

(RESIDENT GENERAL AGENT)

SEE INSTRUCTIONS ON NEXT PAGE FOR REQUIRED SUPPORTING DOCUMENTS.

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

1. Automated Microbiology Analyzer

Quantity

1

Unit

each

Unit Price

Extension

Specs:

* See bid specifications attached

Comments:

APPROVED EQUAL BIDDING ON:

MFG: _____

MAKE: _____

BRAND: _____

PLACE OR ORIGIN: _____

DATE OF DELIVERY: _____

+ Reference Products or Equivalent:

Manufacturer

Model

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)

EXHIBIT “2”



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 05, 2007

AMENDMENT #1 FOR GMHA Bid 024-2007

Automated Microbiology Analyzer

This amendment is being issued to make an appropriate change on the submitted date:

As Reads:

July 06, 2007

8:30 a.m.

Materials Management Department

Change to Read:

July 11, 2007

8:30 a.m.

Materials Management Department

DANIEL C. MATANANE
Administrator Supply Management

Acknowledgment of Receipt: Return acknowledgment to fax number 649-3640

.....
Company

.....
Print Name

.....
Signature

.....
Date

DEPOSITION EXHIBIT

EXHIBIT “3”

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 10, 2007

AMENDMENT #2

FOR

GMHA Bid 024-2007

Automated Microbiology Analyzer

This amendment is being issued to make an appropriate change on the submitted date:

As Reads:

July 11, 2007

8:30 a.m.

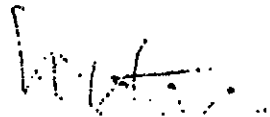
Materials Management Department

Change to Read:

July 13, 2007

8:30 a.m.

Materials Management Department



DANIEL C. MATANANE

Administrator Supply Management

Acknowledgment of Receipt: Return acknowledgment to fax number 649-3640

Company

Print Name

Signature

Date

DEPOSITION EXHIBIT

EXHIBIT "4"

Subject: Automated Microbiology System

From: William Kando <william.kando@gmha.org>

Date: Thu, 01 Nov 2007 10:24:11 -0800

To: PeterJohn Camacho <peterjohn.camacho@gmha.org>

CC: Joseph Mesa <joseph.mesa@gmha.org>, "danny.matanane@gmha.org"

<danny.matanane@gmha.org>, "craig.guevara@gmha.org" <craig.guevara@gmha.org>,

"glenda.pangelinan@gmha.org" <glenda.pangelinan@gmha.org>, "john.benavente@gmha.org"

<john.benavente@gmha.org>, Debbie Alico <debbie.alicto@gmha.org>

PeterJohn,

The 2005 Hospital Preparedness Program (HPP) is at the end of its extension period this month of November 2007. We are required to liquidate the total \$485,000 HPP funding by the end of November 2007, or return it to the U.S. Government ("use it, or lose it"). The good news, with the latest drawdown package submitted this week for \$160,928, we will have worked the total fund balance down to approx. \$161,000. The last project to complete is the procurement ("Bid") of Automated Microbiology Systems (qty. 2), which is currently under protest by JMI and has been with our Legal Counsel since the middle of September 2007 (Bid Opening was July 2007; Bid Protests were August 2007). As this project represents a substantial amount of federal funding for GMHA, I ask for assistance in bringing this bid to closure. This will also help me to then communicate the current status of this particular project to Mollie Mahany, our Federal Project Officer.

Thanks,

William

--

William N. Kando, M.S.M.
Hospital BT Preparedness Coordinator
Guam Memorial Hospital Authority
Operations Division
Tamuning, Guam 96913
(671) 647-2502
Email - william.kando@gmha.org
Website - <http://www.gmha.guam.gov>

this communication may contain CONFIDENTIAL and PRIVILEGED information for the sole use of the intended recipient(s). If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by EMAIL or telephone (671)647-2555 and delete all copies of this message. GMHA Policy 6100-29.

Automated Microbiology System

EXHIBIT “5”

Re: [Fwd: Fy2005 funds]

Subject: Re: [Fwd: Fy2005 funds]

From: Bea Aquino <bea.aquino@gmha.org>

Date: Mon, 13 Aug 2007 07:48:14 +1000

To: William Kando <william.kando@gmha.org>

CC: "glenda.pangelinan@gmha.org" <glenda.pangelinan@gmha.org>, "john.benavente@gmha.org" <john.benavente@gmha.org>, "jim.barnhart@gmha.org" <jim.barnhart@gmha.org>

William,

The Microbiology Analyzer Machine was budgeted & approved in FY 2006 NBHPP-HRSA Funds for \$150,000. Special Order Requisition No. R7-7500-1086 was cut on 3/29/07. As of today, there's still no purchase order. A PO needs to be cut on or before 8/31/07 to show that GMHA have committed and its considered unliquidated obligations in FY2006. As in past years, the intent of the extension is to allow more time to finish the already proposed activities that have been approved by HRSA for the federal fiscal year (FY 2005). Awardees that try to conduct activities outside the scope of the FY 2005 Program will not have those funds or activities approved per CDR, USPHS Branch Chief, Ms. Melissa Sanders Letter dated 6/23/06. If any discrepancies or further information is needed, to contact the Grants Management Specialist. If GMHA chooses to undertake activities being proposed without approval being obtained, funds may not be available and awardees will be responsible for reimbursing those costs to the cooperative agreement.

As long as you have an official approval from Mollie, then its all up to you.

Bea

William Kando wrote:

Folks,

As I discussed with Glenda today, we need to finalize the bid selection this coming week so that we can cut a P.O. for the Microbiology System. As you can see by this email from HHS, we need to obligate funds this month (there will be no deviations from this requirement and no continuations for this funding period). Please expedite.

William

Subject:

Fy2005 funds

From: "Mahany, Mollie (HHS/ASPR)" <Mollie.Mahany@hhs.gov>

Date: Thu, 9 Aug 2007 16:35:48 -0400

To: "Teresa Ehnert" <EHNERTT@azdhs.gov>, "Aronoff, Bart" <baronoff@doh.hawaii.gov>,

"Heidi Sakelarios" <hsakelarios@health.nv.gov>, "William Kando" <william.kando@gmha.org>,

"William Kando" <wekando@guamcell.net>, ped7unt@aol.com, "masiano lemusu"

EXHIBIT “6”

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.

DEPOSITION EXHIBIT

EXHIBIT “7”



Guam Memorial Hospital Authority Aturidåt Espetåt Mimuriåt Guåhan



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

August 10, 2007

REQUEST FOR INFORMATION

Mr. Arcangel Confiado
Sales Manager
MedPharm Corporation
P.O. Box 11864
Tamuning, Guam 96913

Ref: GMHA Bid 024-2007; Automated Microbiology Analyzers

Dear Mr. Confiado,

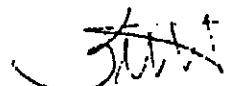
In order to complete our evaluation on GMHA Bid 024-2007 for the Automated Microbiology Analyzers, we are requesting for price quotations for the following reagent cards:

1. Gram Positive Susceptibility Test Cards
 AST-GP63 (22101) ----- \$ _____
 AST-GP66 (22175) ----- \$ _____

2. Gram Negative Susceptibility Test Cards
 AST-GN20 (22184) ----- \$ _____
 AST-GN07 (22006) ----- \$ _____

3. Streptococcus Pneumoniae Susceptibility Test Cards
 AST-GP65 (22149) ----- \$ _____

Your prompt response would be greatly appreciated.


DANIEL C. MATANANE
Supply Management Administrator

DEPOSITION EXHIBIT

EXHIBIT “8”



Guam Memorial Hospital Authority Aturidat Espetat Mimuriat Guahan

850 GOV. CARLOS CAMACHO ROAD
OKA, TAMUNING, GUAM 96913
TEL: 647-2444 or 647-2330
FAX: (671) 648-0145

August 10, 2007

REQUEST FOR INFORMATION

Ms. Jean O. Grape
Sales Executive
JMI Medical Systems, Inc.
125 North Marina 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. <u>Gram Positive Susceptibility Test Cards</u> | | |
| AST-GP63 (22101) ----- | \$ 259.20 | 1 BX |
| AST-GP66 (22175) ----- | \$ 259.20 | 1 BX |
| 2. <u>Gram Negative Susceptibility Test Cards</u> | | |
| AST-GN20 (22184) ----- | \$ 259.20 | 1 BX |
| AST-GN07 (22006) ----- | \$ 259.20 | 1 BX |
| 3. <u>Streptococcus Pneumoniae Susceptibility Test Cards</u> | | |
| AST-GP65 (22149) ----- | \$ 259.20 | 1 BX |

} 20 CARDS / BOX

Your prompt response would be greatly appreciated.

DANIEL C. MATANANE
Supply Management Administrator

DEPOSITION EXHIBIT

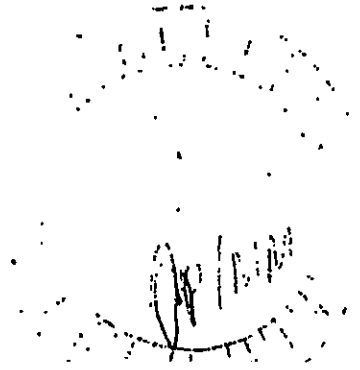


EXHIBIT “9”



Guam Memorial Hospital Authority Aturidat Espetat Mimurlat Guahan

850 GOV. CARLOS CAMACHO ROAD
OKA, TAMUNING, GUAM 96913
TEL: 647-2444 or 647-2330
FAX: (671) 648-0145



ATTN: THED PANGELINAN

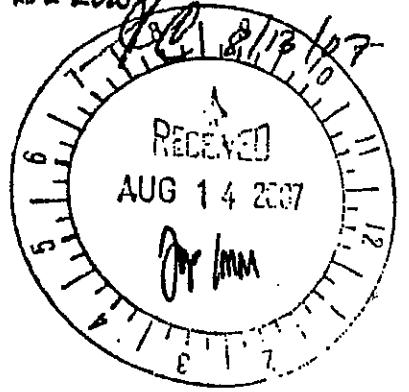
August 10, 2007

REQUEST FOR INFORMATION

REVISION OF EARLIER
FAXED QUOTE! SEE NO
BELOW

Mr. Arcangel Confiado
Sales Manager
MedPharm Corporation
P.O. Box 11864
Tamuning, Guam 96913

Ref: GMHA Bid 024-2007; Automated Microbiology Analyzers



Dear Mr. Confiado,

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. <u>Gram Positive Susceptibility Test Cards</u> | |
| AST-GP63 (22161) ----- | \$ 92.51 |
| AST-GP66 (22175) ----- | \$ 92.51 |
| 2. <u>Gram Negative Susceptibility Test Cards</u> | |
| AST-GN20 (22184) ----- | \$ 92.51 |
| AST-GN07 (22006) ----- | \$ 92.51 |
| 3. <u>Streptococcus Pneumoniae Susceptibility Test Cards</u> | |
| AST-GP65 (22149) ----- | \$ 92.51 |

Your prompt response would be greatly appreciated.

V.B.
THE TEST CARDS ARE SHIPPED
REFRIGERATED 2-8°C

DANIEL C. MATANANE
Supply Management Administrator

IF NDS, SPECIFY EXPIRY DATE OF UFE.

DEPOSITION EXHIBIT

EXHIBIT “10”

Guam Memorial Hospital Authority
Medical Laboratory Department
850 Gov. Carlos Camacho Road
Tamuning, GU 96913

August 14, 2007

TO: Peter John D. Camacho, MPH
Hospital Administrator/CEO

VIA: Daniel Matanane
Supply Management Administrator

FROM: Glenda Pangelinan
Lab Assistant Administrator

SUBJECT: Lab Recommendation for GMHA Bid 024-2007 Automated Microbiology Analyzer

After having reviewed and discussed the three proposals submitted with the Microbiology department, we are recommending to purchase two (2) Vitek 2 Compact 60's with Observa Software from MedPharm. Although all three vendors submitted proposals for instruments which can meet our testing needs, our decision was based primarily on the following items:

- The availability of on island technical support. The immediate response to technical problems will minimize any instances of reverting to manual methods. Our current staffing levels will be severely taxed if there is a need to revert to manual methods due to instrument down times. Having a trained engineer on island may lead to the minimization of prolonged down time.
- There will be minimal changes to our current practices to include policies and procedures. We currently are using Vitek's older version of its Microbiology analyzer. The upgrade to the Vitek 2 will include similar processes thus requiring just revisions to our current standard operating procedures versus introducing a brand new test process if we were to go with a new instrument altogether. Our current staffing levels cannot accommodate the anticipated technician downtime needed for orientation, training and implementation of new procedures for a different analyzer.

Additionally, the competitive pricing offered by MedPharm makes it possible for us to purchase two instruments. A second instrument will serve two purposes. It will enable us to manage any increase in test volumes due to biological incidents as well as serve as a possible backup instrument in the event that the primary instrument goes down. There will be zero downtime.

The practice of having redundant test systems in the lab is common. Our major lab sections all have redundant instruments in operation (E.g. Chemistry, Hematology, and Coagulation).

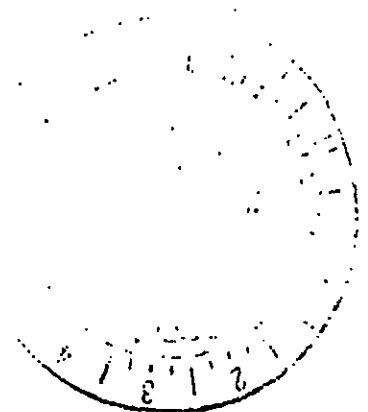


EXHIBIT “11”



Guam Memorial Hospital Authority Aturidat Espetat Mimurlat Guahan



530 GOV. CARLOS CAMACHO ROAD
OKA, TAMUNING, GUAM 96913
TEL: 647-2444 or 647-2330
FAX: (671) 648-0145

September 11, 2007

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

Reference: JMI Protest Letter dated August 31, 2007, Subject: GMHA Bid No. 024-2007

Dear Mr. Vega:

The Guam Memorial Hospital Authority (GMHA) has reviewed your protest letter dated August 31, 2007 wherein you cited the non compliance of the bid tendered by Medpharm.

Scope of services: To provide reagents and supplies for a minimum of 3000 tests per year for use with the Microbiology Analyzer, hence they just provided the cost for the equipment.

The solicitation's project description paragraph stated that the intent of the solicitation is to procure an Automated Microbiology Analyzer. The reference to reagent supplies for a minimum of 3,000 tests per year is to ensure the successful bidder is able to provide the reagent supplies for the analyzer they are offering. Amendment #3, dated July 12, 2007, was issued whereby the cost of the reagent supplies is separate from the equipment. JMI Medical System, Inc. responded with separate prices for the reagent supplies and equipment, whereas, Medpharm only provided a price for the equipment and a listing of the reagent supplies without pricing. The project's scope of service did not specify which test card is required since the offered analyzer utilize various test cards. Both bidders listed reagent supplies that were not descriptive enough to ascertain whether the test kits are the ones needed. Subsequently, the bidders were asked to submit prices for specific test cards provided by the user department. The bidders responded with quotes. Medpharm provided the lower pricing on both the equipment and reagent supplies which is one of the criteria the committee looks at to award Bid 024-2007.

Technical support: (1) the vendor must include one (1) year maintenance support based on the Manufacturer's recommendation as part of the bid, and (2) Vendor must provide a 24-hour service hotline.

Medpharm did provide these requirements in their bid package. They offered one (1) year warranty to include parts and labor per the manufacturer's recommendations. Medpharm's biomedical engineer will undergo training at the manufacturer's site to provide the technical support during the warranty period. Also, Medpharm's Biomedical engineer and BioMerieux's Technical Specialist who are based out of the Philippines will make available a 24/7 hotline service.

Letter to JMI
September 11, 2007
Page 2

Pursuant to Section 8-101.07 of the GMHA Procurement Rules and Regulations, I hereby issue my decision regarding your protest. I have determined that your protest is without merit and should not be sustained.

Please note that you have the right to administrative and judicial review of this decision pursuant to Chapter 8-103.07.

Should you have any further questions, do not hesitate to contact me.

Sincerely,


PETER JOHN D. CAMACHO M.P.H.
Hospital Administrator / CEO

PDC/sjb

EXHIBIT “12”



JMI Medical Systems, Inc.

P. O. Box 6577, Tamuning, Guam 96931
 Tel: (671) 646-1256 • Fax: (671) 649-5685
 E-mail: sales@jmiguam.com • Website: www.jmiguam.com



September 13, 2007

Mr. PeterJohn D. Camacho, MPH
 Hospital Administrator/CEO
 Guam Memorial Hospital Authority
 850 Governor Carlos G. Camacho Road
 Oka, Tamuning, Guam 9613

RE: GMHA BID No. 024-2007
 Automated Microbiology Analyzer
 JMI Protest Letter dated August 31, 2007

Dear Mr. PeterJohn Camacho,

Hafa Adai! Thank you for your prompt response with reference to the above-mentioned matter.

After thorough review of your response, please allow me submit additional information and to highlight some statement of facts.

Based on GMHA Bid 024-2007 bid package and pertinent sections on the Scope of Services: To provide reagents and supplies for a minimum of 3000 tests per year for use with the Microbiology Analyzer. it is my belief that the intent of GMHA was to solicit for bid proposals for the equipment and to include reagents and supplies for use. The basis for this and was further clarified by GMHA can be substantiated in GMHA's response to JC Marketing as clearly stated in Amendment No. 3, issued July 12, 2007 [see attached]. Amendment No. 3, paragraph number 1, so states that '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. GMHA further states that: The reagent and supplies cost will be separate from the instrument itself. In fact, your letter of September 11, 2007, clearly referred to that effect and that JMI responded with separate prices for the reagent supplies and equipment, whereas Medpharm only provided a price for the equipment and a listing of the reagent supplies WITHOUT pricing. That statement and the fact that Medpharm's proposal lacks the required price quotes for supplies and reagents is a clearly manifest that Medpharm did not comply with your (bid) requirements and therefore NOT Qualified and Non-responsive. Furthermore, under the General Terms and Condition of GMHA BID 024-2007, GMHA requested an "ALL OR NONE" BIDS. [see attached] That, by such request, all items (are) to be bid or none at all. GMHA has clearly established the fact that Medpharm did not submit a bid proposal on reagents and supplies at the bid opening.

In addition, I would like to point out that on August 10, 2007, GMHA did request for price quotes for the specific reagents and supplies for this particular equipment from us and Medpharm relative to GMHA BID 0240-2007. In its Request for Information [see attached], GMHA stated that they need the price quotes to complete its evaluation of GMHA BID 024 2007. This further confirms our belief that GMHA intends to evaluate bid proposals with price quotes on reagents and supplies. Again, by GMHA's own statement and admission, MEDPHARM only provided a

price quote for equipment and a listing of the reagents without pricing. Of note, it seems highly irregular for GMHA to request for price quotes after the bid opening when in fact it was a (bid) requirement. Nonetheless, the real issue and the contention is that Medpharm is disqualified and non-responsive for NOT submitting price quotes for supplies and reagents as required by the bid.


In light of my foregoing review and statement of facts, I am requesting that you re-consider your initial determination that my bid protest [see letter dated August 31, 2007 and Sept 11, 2007] is without merit and should not be sustained. And that, Medpharm being non-responsive to the bid, should be disqualified. Now, therefore, since JMI Medical Services is the only qualified and responsive bidder, JMI seeks relief and be awarded the bid.

However, should your further review and final determination of this matter sustained your earlier findings and determination that my protest is without merit, please be informed that JMI Medical Sales invokes its rights to Administrative and Judicial review of such a decision pursuant to Chapter 9-103-07 as stated in your letter.

Looking forward to an expeditiously and favorable resolution on this matter.

Un Dangkulo Na Si Yu'os Ma'axe.

Respcfully,


Rey M. Vega
General Manager

Cc: Ed R. Ilao, PE, President
John R. Ilao, Vice President
Danny Matananc, GMHA Supply Management Administrator

Attachments: Bid Invitation and Award Terms and Condition
GMHA Bid Solicitation Proposal
July 12, 2007 Amendment No. 3
August 10, 2007 Request for Information
August 31, 2007 Bid Protest Letter
September 11, 2007 Response to Bid Protest Letter

EXHIBIT “13”



Guam Memorial Hospital Authority Aturidat Espetat Mimuriat Guahan



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

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.

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 as 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

EXHIBIT “14”

1 A No.

2 Q We're almost done. It's my understanding that GMH
3 has received its Vitek 2 machines, is that correct?

4 A It has received one of them.

5 Q Are they operational?

6 A Yes, they had the installation and training.

7 Q So you're expecting another one?

8 A Yes. We're just waiting for them to make room; to
9 remove a cabinet for more room to put the instrument.

10 Q Were there test kits purchased for the machine?

11 A I have. Actually, I'm still waiting.

12 Q Who did you purchase these test kits from?

13 A I want -- a requisition? I'm trying to remember if
14 the purchase orders have come back. I submitted the
15 requisition. I want to say MedPharm. Yes.

16 Q Did you ask for other bids from other suppliers for
17 these test cards?

18 A No.

19 Q So only MedPharm?

20 A I put -- at the time -- only because we -- actually,
21 the instrument came sooner than I expected it to come and I
22 wasn't ready for it, to be honest with you. They came with
23 the instrument with their batch of kits for the install, but I
24 didn't have reagents for after the install.

25 Q That's how you ordered?

EXHIBIT “15”

**Guam Memorial Hospital Authority
Medical Laboratory Department
850 Gov. Carlos Camacho Road
Tamuning, GU 96913**

September 6, 2007

**TO: Danny Matanane
Supply Management Administrator**

**FROM: Glenda Pangelinan 
Lab Assistant Administrator**

SUBJECT: RESPONSE TO VENDOR PROTEST BID NO. 024-2007

In reviewing the items stated in the bid protest from JMI Medical Systems toward the bid tendered by MEDPHARM, the following are my comments and conclusions.

I have reviewed the proposal submitted by MEDPHARM. Their bid packet did, in fact, include and covered all of the Scope of Services requested by us. All items were detailed in MEDPHARM's Scope of Services as part of their bid packet proposal including:

- 1) Their ability to provide reagents and supplies for a minimum of 3000 tests per year;
- 2) one year maintenance support (parts and labor) based on manufacturer's recommendations;
- 3) a 24/7 service hotline

The cost for the reagents and supplies was not required under our Scope of Services. The vendor's were informed, via Amendment #3, that the price for the equipment itself should be specified on their proposals, since the intent of the bid was to acquire an Automated Microbiology Analyzer. The estimate of reagents and supplies for a minimum of 3,000 tests per year was for GMHA to determine that the awarded vendor is capable of providing the reagents and supplies should we award any future purchase orders to them.

After re-evaluating the submittals from the two qualified vendor's, and determining that MEDPHARM's tender for the equipment, supplies, and reagents are lower than that of JMI Medical Systems', I request that we continue our award to MEDPHARM.

EXHIBIT “16”



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



September 10, 2007

MEMORANDUM

TO: Supply Management Administrator
FROM: Medical Electronic Superintendent
SUBJECT: **Bid Protest by JMI Medical Systems, Inc.**
Ref. Bid: GMHA 024-2007 Automated Microbiology Analyzer

The following is in response to JMI Medical Systems, Inc. letter dated August 31, 2007 protesting the award of Bid 024-2007 to MedPharm base on the following:

1. **Scope of Services - To provide reagent and supplies for a minimum of 3000 test per year for use with the Microbiology Analyzer, hence they just provide the cost for the equipment.**

Evaluation Committee – Reference to Amendment 3 dated July 12, 2007 clarifying to separate the cost of the reagent supplies and equipment. JMI Medical System did provide the cost of the reagent supplies and equipment. MedPharm only provided the cost of the equipment and listing of the reagent supplies without pricing because Vitek 2 utilize various test card which the scope of work did not specify.

During the review process, the evaluation committee determinè the test kits that was provided by both vendors were not descriptive enough for the committee to determine if the test kits being offered are the test panels currently being utilize.

Therefore the committee agreed to request quotes from JMI Medical Systems and MedPharm for the specific test cards to be use. The listing of the specific test cards was provided by the Laboratory Supervisor. These listing were provided to JMI Medical Systems and MedPharm on August 10, 2007. Both vendors provided their quote on August 13, 2007. MedPharm provided lower pricing on the equipment and reagent supplies which is one of the criteria the committee locks al to award Bid 024-2007 to MedPharm.

2. Technical Support - 1) Vendor must include one (1) year maintenance support base on the manufacturer's recommendation as part of this bid. 2) Vendor must provide a 24-hours service hotline.

Evaluation Committee – MedPharm did provide this requirement in their bid package. They offer one (1) year warranty to include parts and labor per manufacturer's recommendation. MedPharm's biomedical engineer will undergo training at the manufacturer's site to provide the technical support during the warranty period. Also 24/7 hotline service is available by MedPharm's Biomedical engineer and bioMerieux's Technical Specialist base out of the Philippines.

If you have any questions or concerns regarding this matter, feel free to call me at Facilities Maintenance Department at extension 2120 or 2224.

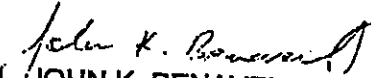

JOHN K. BENAVENTE

EXHIBIT “17”

Subject: GMHA Bid 024-2007-Microbiology
From: "glenda.pangelinan" <glenda.pangelinan@gmha.org>
Date: Mon, 06 Aug 2007 11:34:18 +1000
To: Lola Pangelinan <lola.pangelinan@gmha.org>, Danny Matanane <danny.matanane@gmha.org>
CC: John Benavente <john.benavente@gmha.org>, Theojoshua Pangelinan <theojoshua.pangelinan@gmha.org>

Lola,
Can I get additional information from 2 vendors (JMI and Medpharm) regarding reagent cards and pricing. These are cards specifically for the BioMerieux analyzer they are both proposing. Here are the product numbers:

Gram Positive Susceptibility Test Cards:
AST-GP63 (22101)
AST-GP66 (22175)

Gram Negative Susceptibility Test Cards:
AST-GN20 (22184)
AST-GN07 (22006)

Streptococcus Pneumoniae Susceptibility Test Cards:
AST-GP65 (22149)

Thank you.
Glenda

This process with to each vendor to above the clarity questions to complete evaluation.
CG

EXHIBIT “18”

Subject: Re: [Fwd: Bid no. 024-2007, Microbiology Analyzer]

From: "glenda.pangelinan" <glenda.pangelinan@gmha.org>

Date: Mon, 09 Jul 2007 17:15:19 +1000

To: Lola Pangelinan <lola.pangelinan@gmha.org>

Resend

Lola,

My answeres are in red.
Glenda

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. It will not be incorporated to the equipment (in other words, it is not a reagent agreement in the sense that they will throw in the equipment for free like our current Dade contract for Chemistry or the Roche Accucheck agreement). Because the funding source is the Bioterrorism grant money, we have to outright purchase the equipment. I think John B. and I included the part of the reagents and supplies so that the vendor can give us pricing on them at the same time as our equipment purchase price. If we include the part of the reagents on the agreement to begin with then we were hoping to get almost like a locked in price for the reagents for like a 4 to 5 year contract (the vendors should give us some deal with reagents since we will be purchasing their equipment).

BT grant money however, can only pay for the equipment. The reagents and supplies will come out of lab's operating budget..

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. If they can answer yes to the requirement on page 2 then they will not have any problems. I believe the specs do say that they do cover the costs for the LIS interface with their equipment.

The lab's LIS vendor is CERNER. Most major equipment vendors are able to link to the CERNER systems.

3) Dimension specification limited to a specific brand or brands. Is GMHA limiting the acceptable brand of Microbiology Analyzer to be considered. Please note virtually every equipment manufacturer differ in dimensions.

John took care of the dimensions for me. I took a look at what is on the specs. I think the dimensions he put were the dimensions of our current instrument.

The dimensions aren't necessarily restricted to what is on the specs. I'm sorry, I didn't catch this before it went out. I took it for granted that what was on the specs were okay since John took care of it.

Ideally, I would like for the instrument to fit our current work space.

However, if necessary, we can do minor renovations to fit whatever instrument we get (i.e. take out over head cabinet space.). The height that John put in the specs is too restrictive in my opinion. It should be taken out. More important is the vendor meeting our workload requirements in terms of the number of tests it can perform more so than space. Instrument size usually corresponds with the workload numbers. Our workload is about medium therefore, the instruments offered are usually very similar in size between vendors.

Looking forward to hearing from your office. Please let us know in the event of any concerns regarding the above queries.

Kind regards,

Eric Canovas
JC Marketing, Inc.

EXHIBIT “19”

BID PROJECT NO. GMHA 024-2007
GMHA Automated Microbiology Analyzer

Company

Evaluation Factors	JMI Medical		MedPharm		J.C. Marketing	
	JB	GP	JB	GP	JB	GP
Adherence to Section II and I for proposed Microbiology Analyzer (30 Points)	30	30	30	30	30	30
Qualification and Performance Data of Company (20 Points)	5	10	10	10	5	10
Maintenance and service experience/history (20 Points)	5	10	15	15	10	10
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	15	15	15	10	15
Ability to demonstrate expertise and functionality as evidenced by client reference and resources or organization. (15 Points)	5	15	15	15	10	15
Total	50	73	80	75	80	73
Average Point	1	1	1	1	1	1

*Option 2: Vitek 2 Compact 10 96.5%
 Total: \$189,800
 Includes Installation and Training
 Panels: \$77,700
 Total: \$145,000*

*Option 1: Vitek 2 Compact 60 without Software @ \$88,528 (includes Installation and Training)
 Panels: Quote to be provide when GMH provides type of panels.
 Total: \$579,328*

*Option 1: Vitek 60 System @ \$78,285:
 Includes Installation and Training
 Panels: \$87,635
 Total: \$145,000*

*Option 2: Vitek 2 Compact 60 without Software @ \$88,528 (includes Installation and Training)
 Panels: Quote to be provide when GMH provides type of panels.
 Total: \$579,328*

Evaluation Committee Panel:
 John K. Bernavente, Medical Electronic Superintendent: *John K. Bernavente 7/23/07*
 Glenda Pangelinan, Laboratory Supervisor: *Glenda Pangelinan 8/14/07*

DEPOSITION EXHIBIT

EXHIBIT “20”

1 Q As far as you know, was a copy of Mr. Matanane's
2 letter also sent to JC Marketing?

3 A I don't know. It shouldn't, though, because JC
4 Marketing did not propose the same instrument.

5 Q So it was only to these two bidders?

6 A Yes.

7 Q That you provided this information?

8 A Yes.

9 Q Were these documents considered by you in your
10 deliberations with respect to the award of the Microbiology
11 Analyzer contract to MedPharm?

12 MR. UNPINGCO: We object to that question as it
13 includes on the deliberation privilege of the source selection
14 committee.

15 MR. SISON: Deliberation privilege?

16 MR. UNPINGCO: There is a deliberation privilege,
17 but it's your question.

18 BY MR. SISON: (Continuing)

19 Q So you're not going to answer the question as to
20 whether these documents were considered with respect to your
21 deliberations, your personal deliberations?

22 A It was reviewed. It didn't play -- I just wanted
23 information on the test cards itself. Our primary focus was
24 really on the analyzer. I wanted information on the test
25 cards as a -- additional supportive -- in the event we do get

1 MedPharm" and then she goes on to clarify what the extent of
2 that letter was.

3 BY MR. SISON: (Continuing)

4 Q The question is simple. Did you look at any cost
5 information for supplies and reagents in making your
6 determination?

7 A As far as the cost, again, it was there because I do
8 see it. It wasn't -- it's something that we were
9 knowledgeable about. I just wanted to -- more importantly is
10 knowing whether these vendors can provide these reagents
11 because that's one thing. To purchase an instrument, okay,
12 who am I going to get reagents from, especially in terms of
13 GMH and us being over here.

14 Q Referring you back to J and K, there are specific
15 cost information that was provided by both vendors --

16 A Yes.

17 Q -- with respect to their bids, is that correct?

18 A Yes.

19 Q And you saw these documents?

20 A Yes.

21 Q Prior to making your award, is that correct?

22 A Yes, yes.

23 Q So prior to the protest, before you were made aware
24 of any protest, you had recommended on August 14 for the award
25 to go to MedPharm, is that right?

EXHIBIT “21”

1 complete the drawdown. We would have -- it's either use it or
2 lose it so.

3 Q I understand. But it was available under the 2006?
4 In fact, it could also be available with other future funds
5 for future years, even 2007, 2008, right?

6 A Maybe not.

7 MR. UNPINGCO: Objection. That calls for
8 speculation.

9 A Yeah.

10 MR. UNPINGCO: These funds have certain
11 requirements attached to each fiscal year that may well change
12 depending on the projects for which they're allocated.

13 A That's right. Grant guidance.

14 BY MR. SISON: (Continuing)

15 Q But for sure you could have used the funds of 2006
16 because it was already allotted for that time?

17 A It had been approved for 2006.

18 Q What is the hospital's fiscal year? Is it also the
19 calendar year?

20 A The NBHPP program fiscal year is not aligned with the
21 hospital's fiscal year.

22 Q What is the hospital's --

23 A This program is always like a -- I believe a year
24 behind. So the '05 program is really -- for the hospital,
25 we're already in, I believe, FY06. The hospital's always --

EXHIBIT “22”

DATE	TIME	ACTIVITY
29-Mar-07		Special order request initiated by Laboratory Department for 1 Microbiology Analyzer.
18-Apr-07		Funding approved by CFO & Requisition # R7-7500-1086 assigned.
23-Apr-07		Requisition issued to a buyer for procurement action (Theo).
22-Jun-07		Issued Bid Invitation and Award Packet 024-2007 with specs; initial submission date of 7/6/07 at 0900 in Cafeteria Conference Room.
30-Jun-07	11:39 AM	JC Marketing's e-mail requesting clarification on 3 points.
5-Jul-07		Issued Amendment #1 to extend submission date to 7/11/07 @ 0830 am. Prospect acknowledgements received on same day.
5-Jul-07		Request letter from JMI to extend submission date to 7/13/07.
9-Jul-07	5:15 PM	Received response from Laboratory to JCM's 6/30 clarification letter.
10-Jul-07		Issued Amendment #2 to extend submission date to 7/13/07 @ 0830 am. Per JMI request; Prospects acknowledgements received.
11-Jul-07	10:12 AM	Received further clarification from Bio-Med on response from Laboratory on JCM's clarification letter.
12-Jul-07		Issued Amendment #3 in response to JCM clarification request; acknowledgements received.
13-Jul-07		Buyer forwards cover letter on Bid's public opening; with bid responses to Bio-Med for evaluation panel review.
17-Jul-07		Received an unsolicited letter from Medpharm to explain the reason why prices were not provided on reagents at time of bid submission & requesting for an interview as allowed by the solicitation.
6-Aug-07	11:34 AM	E-mail from Laboratory requesting additional information from two bidders on reagent cards & prices on specific reagent on list provided. Buyer directed to request clarification from bidders as requested.
10-Aug-07		The request for information letter is prepared and sent to the bidders, as requested by the panel.
10-Aug-07	6:00 PM	Rec'd e-mail from BT Co-ordinator requesting status and need to expedite procurement due to funding issues.
13-Aug-07	7:48 AM	Received e-mail message from GMHA's Federal funds coordinator issuing a cautionary note on federal funding requirements and use.
14-Aug-07		Received recommendation of award letter from Laboratory and justification.
17-Aug-07		Award recommendation letter, supporting documents & status letters to bidders, purchase order sent to Hospital Administrator / CEO for approval & signature.
17-Aug-07		Contract document signed with Medpharm.
17-Aug-07		CFO recertifies funding for 2 units instead of the original one unit.
17-Aug-07		Received e-mail message from GMHA's BT coordinator on funding status.
28-Aug-07		Letter from Supply Management Administrator to CFO requesting recertification of funds to acquire 2 units instead of the original 1 unit (attached to purchase order document).
30-Aug-07		Received JMI's letter requesting a copy of Medpharm's bid submittal. Information provided as requested.
31-Aug-07	3:55 PM	Received JMI's faxed protest letter dated the same day.
4-Sep-07		Issued letter to all bidders concerning the protest & that all actions are stayed until protest is resolved.
4-Sep-07		Notified GMHA evaluation team of the protest and to seek assistance on developing a formal GMHA response.
5-Sep-07	11:21 AM	Received notice from Lab; indicating availability to meet & discuss GMHA response.
6-Sep-07		Received Laboratory's response to protest.
7-Sep-07		Received the Draft GMHA formal response from Evaluation Committee (Unsigned)
10-Sep-07		Received Bio-Med's response to protest.

OFFICE OF THE PUBLIC AUDITOR
 PROCUREMENT SPECIALS

DEPOSITION EXHIBIT

0

DEC 18 2007
 TIME: 4:00 PM
 BY: T. Gustafson
 FILE No. ORLA 07-011

11-Sep-07		GMHA's formal response to the protest faxed to JMI and also forwarded to GMHA legal for added advise.
14-Sep-07	9:59 AM	Received JMI's response dated 9/13/07 to GMHA's formal response letter dated 9/11/07.
20-Sep-07		Drafted and forwarded bid documentation to GMHA Legal Counsel (Mair, Mair, Spade & Thompson) for advise.
1-Nov-07	10:24 AM	Received additional notice from GMHA BT Coordinator on funding status.
6-Nov-07		Drafted and forward all documentation to GMHA Legal Counsel (Unpingco) for advise after receiving notice from (Mair, Mair, Spade & Thompson) of possible conflict of interest.
15-Nov-07	7:32 AM	Warning from BT Coordinator on losing funding due to delays.
16-Nov-07		Received advise from GMHA Legal Counsel (Unpingco) on GMHA's options.
21-Nov-07		Supply Management Administrator met with JMI representatives to attempt to resolve the protest.
23-Nov-07		Supply Management Administrator requested meeting with GMHA Legal Counsel (Unpingco) to review the Hospital's position.
26-Nov-07		Drafted GMHA's formal response to JMI's reconsideration request (unsigned)
27-Nov-07		Final GMHA response to JMI's reconsideration request (signed) & faxed to JMI.
28-Nov-07		Abstract generated on requirement options w/o test cards on offers.
28-Nov-07		The contract is affirmed and a Notice to proceed was issued to Medpharm.
30-Nov-07		Received JMI's hand delivered letter informing GMHA, they will exercise their right to administrative and judicial review per Chapter 9-103.07.
3-Dec-07		Drafted GMHA letter to inform Legal Counsel, the Law Office of John S. Unpinco & Associates and to seek additional advise (unsigned).
11-Dec-07		Received JMI's notice of Appeal to OPA with documents.
12-Dec-07		Received notice from OPA on JMI's appeal being filed.
18-Dec-07		NO FURTHER ENTRY

RECEIVED
 OFFICE OF THE PUBLIC AUDITOR
 PROCUREMENT SERVICES

DEC 18 2007

TIME: 4:00 PM
 BY: J. Cuneo/ro/ta
 FILE No. OPA-73 07-011

EXHIBIT “23”

The Law Offices of John S. Unpingco & Associates LLC
777 Route 4
Suite 12B
Sinajana, Guam 96910
Telephone: 671-475-8545
Facsimile: 671-475-8550

Attorneys for Agency Guam Memorial Hospital Authority

DEC 18 2007
TIME: 2:07 PM
BY: J. Unpingco
FILE No. OPA-PA-07-011

OFFICE OF THE PUBLIC AUDITOR

In the Appeal of)
)
JMI Systems INC.)
)
)
Appellant.)

AGENCY RESPONSE

Docket No. OPA-PA-07-011

**AGENCY RESPONSE
(GMHA'S ANSWER)**

I. FACTUAL STATEMENT

GMHA issued a solicitation (GMHA Bid 024-2007) for the purchase of an Automated Microbiology Analyzer on June 22, 2007. There were three amendments to the solicitation, the most important one being Amendment No. 3 which was issued on July 12, 2007. A copy of the Amendment is attached as Exhibit A hereto. The Amendment was issued in response to JC Marketing's request for clarification. The critical portion of the Amendment is paragraph 1 which states that:

"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.”

Nowhere in Amendment 3 were bidders instructed to include a price for reagent and supplies on their bids. A copy of the page entitled, “Guam Memorial Hospital Authority Bid Specifications” is attached as Exhibit B.

In the bid specifications sheet there is only one item listed on which a unit price (bid price) was to be completed. The item listed was “1. Automated Microbiology Analyzer”. There was no separate line entry for reagent and supplies. Similarly, with the “Bid Offer” page attached hereto as Exhibit C.

Amendment 3 plainly and clearly instructs bidders to not include the price of reagent and supplies in their bid price for the Automated Microbiology Analyzer. Amendment 3 did not say when the prices of the reagent and supplies were to be submitted.

The General Terms and Conditions Sealed Bid Solicitation & Award Section did state the provisions that were applicable to this bid. Among the provisions checked as being applicable were Section 7 “All or None” Bids, Section 10 “Bidders Prices” and Section 25 “Award, Cancellation and Rejection”.

The “Project Description” of the solicitation states that: “The hospital is looking to secure a source for one new automated microbiology analyzer to replace its current equipment”. Section 1 (1) of the Scope of Services under the heading “Supplies” does refer to the provision of “reagent and supplies for a minimum of 3,000 tests per year for use with the Microbiology Analyzer” but provides no description of the types of reagents and supplies or the types of tests to be performed.

Sealed bids were received from three bidders: JMI Medical Systems, Inc. (hereinafter referred to as “JMI”), JC Marketing and Medpharm. Medpharm’s bid for the Automated Microbiology Analyzer for option 1 was \$79,328.00. Its option 2 bid was \$69,528.00. Medpharm did not submit a bid on reagents and supplies. JMI’s bid for the Analyzer for Option 1 was \$145,000.00 and for Option 2 was \$189,950.00 which

included the cost of reagents and supplies. JC Marketing submitted a bid for \$90,200.00 on the analyzer only.

As the test card information (reagent and supplies) provided by JMI and Medpharm were not descriptive enough to determine whether the test card being offered were the test cards currently being used by GMHA; and, as the Automated Microbiology Analyzer being proposed by both bidders used a variety of test cards, GMHA requested price quotes from both bidders on the specific test cards to be used by GMHA. JMI's proposed price was \$259.20 per box of cards for all three specific cards. Medpharm's price was \$92.51 per box.

Based on the bid prices submitted, the bids from JMI and J.C. Marketing were rejected as being too high. As Medpharm's bid met the specification requirements, Medpharm was the successful bidder.

JMI then protested prior to award being made on August 31, 2007. The protest was denied. JMI then filed a Request to Reconsider on September 13, 2007. GMHA issued its decision letter on November 27, 2007 wherein GMHA decided to award the contract to Medpharm for the Automated Microbiology Analyzer and to reject all bids for reagent supplies. In this letter GMHA also determined pursuant to GMHA 9-101.05 that the award of the contract without delay was necessary to protect the substantial interests of the hospital. A copy of the November 27, 2007 letter is attached as Exhibit D. Three work days later, a contract was awarded to Medpharm for the Analyzer only.

On November 30, 2007 JMI informed GMHA by letter that it "will exercise its right to administrative and judicial review". On December 12, 2007, JMI filed its appeal with the Office of the Public Auditor. GMHA now submits this Answer to JMI's appeal.

II. THERE WERE NO ERRORS OF FACT OR GROUNDS FOR APPEAL.

GMHA respectfully submits that GMHA's award of the contract to Medpharm was not erroneous as a matter of fact or law. GMHA correctly determined that Medpharm was the lowest responsive bidder. And, there is sufficient legal and contractual authority for GMHA to reject the portion of the bid regarding "supplies".

III. LEGAL ARGUMENT

A. The “reagents and supplies” portion of all bids were nonresponsive.

Nowhere in the solicitation and its amendments were the specific types or descriptions of “reagents and supplies” set forth. Amendment 3 clearly does not describe them as it, in pertinent part, only directed that the prices for reagents and supplies not be included in the price of the Automated Microbiology Analyzer. Equally important is the fact that the Analyzers proposed by both Medpharm and JMI utilize a variety of test cards (supplies). The description of “supplies” in Section 1 (1) of the Scope of Services in the solicitation gives little information. The fact that neither the bid specification sheet nor the “Bid Offer” page had no separate line for “reagent and supplies” further contributed to the ambiguity. Thus, the solicitation’s specification with respect to the “reagents and supplies” was ambiguous.

Despite the ambiguity in the specifications, JMI nonetheless proposed a price on reagents and supplies. Unfortunately, the reagents and supplies proposed by JMI were different from what was needed by GMHA. GMHA was then faced with two bids. One bid (Medpharm’s) did not propose a price on “reagent and supplies” while the other bid (JMI’s) proposed a price on “reagents and supplies” that were not needed by GMHA.

As the two bids were both partially non-responsive, as the primary purpose of the solicitation was to procure an Automated Microbiology Analyzer (see “Project Description” in the solicitation), and as the federal funding to be used to purchase the Analyzer was about to expire GMHA did the most logical and prudent thing to do. GMHA rejected the “reagents and supplies” part of the bids. 2 GAR § 3115 (d)(2)(a) gives legal authority for the rejection of part of 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”. This provision is also found in 26 GAR § 16316 (d)(2)(a). The instant case precisely fits the intent, purpose

and function of 2 GAR § 3115 (d)(2)(a) and 26 GAR § 16316 (d)(2)(a). Thus, reliance on these statutory provisions is most appropriate.

B. It is in GMHA's Best Interest to Award a Contract to Medpharm

One does not remedy a mistake by committing a far worse mistake. JMI's goal in this protest is to be awarded a contract for the Automated Analyzer and its proposed "reagents and supplies". A comparison of JMI's description of the supplies it proposes to furnish (which is found in its bid) and GMHA's description of the supplies it seeks (which is in its August 10, 2007 letter and was submitted as Exhibit D by JMI) shows that the descriptions are starkly different. For GMHA to purchase supplies it does not need is a terrible waste of government funds.

Moreover, as federal funding is involved in this procurement, there will be accountability to the U.S. Government. The U.S. Government has little tolerance for fraud, waste and abuse. It has adequate staffing and funding to enforce its programs designed to investigate and prosecute waste such as would be the case here if GMHA were to award this entire procurement to JMI.

Next, it is in the best interests of GMHA to award a contract just for the analyzer. The federal funds to be used to purchase the analyzer were about to expire. Given the constant funding shortages and problems faced by GMHA this opportunity to purchase vital diagnostic equipment cannot be missed. It is in the best interests of not only GMHA but the entire community of Guam that the analyzer be purchased.

C. JMI's Proposal for "supplies" did not comply with what was requested.

JMI in this appeal contends that its proposal for supplies complied exactly with what was requested. This is absolutely untrue. A look at JMI's description of its proposed supplies is quite telling. JMI's supplies as stated in its bid were:

“Start up kits for Vitek 60 Systems:

Compose of 40 test/grm + and –

2 box – GNI (20 cards/box)

2 box – GNS (20 cards/box)

2 box – GPI (20 cards/box)

2 box – GPS (20 cards/box)

Supplies for the 3,000 test/annum:

150 kits for 1D-GNI/GPI

150 kits for sensitivity – GNS/GPS”.

In the solicitation under the heading “Supplies” are the following descriptions:

“1. Provide reagent and supplies for a minimum of 3,000 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.”

Nowhere are the “reagents and supplies” specifically described in the solicitation. In fact, the specifications are truly ambiguous, so how can JMI honestly contend that their proposal for supplies complies exactly with the specifications? GMHA has been quite forthright in stating that its specifications were indeed deficient.

GMHA reviewed the “supplies” proposed by JMI and determined that these “supplies” were not the test cards needed by GMHA. In its August 10, 2007 letter, GMHA set forth the specific descriptions as to the test cards (supplies) GMHA needed. Its descriptions are as follows:

- “1. Gram Positive Susceptibility Test Cards
AST-GP63 (22101)
AST-GP66 (22175)

2. Gram Negative Susceptibility Test Cards
AST-GN20 (22184)
AST-GN07 (22006)
3. Streptococcus Pneumoniae Susceptibility Test Cards
AST-GP65 (22149)

Even a cursory comparison between what JMI was proposing as “supplies” and what GMHA stated in its August 10, 2007 letter leads to the inevitable conclusion that GMHA’s needs are different from what JMI wants to provide to GMHA. GMHA has been acting in good faith in this procurement.

D. There is a Conflict between Two Provisions of the General Terms and Conditions of the Solicitation That Can Be Resolved.

Paragraph 7 of the General Terms and Conditions of the solicitation states as follows:

“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”

Paragraph 25 of the General Terms and Conditions of the solicitation states as follows:

“25. Award, Cancellation and 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” (Emphasis added).

Under paragraph 25, GMHA can unquestionably reject bids in part. As there is an obvious conflict between paragraphs 7 and 25 such a conflict is nonetheless legally resolvable. There is a principle of contract law interpretation which states that: “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 Contract § 384 citing International Union of Operating Engineers v. J.A. Jones Construction Co., 240 S. W. 2d 39 (Ky. 1951).

The primary purpose of this solicitation is clearly to procure an Automated Microbiology Analyzer. (See “Project Description” in the solicitation). The paragraph of the General Terms and Conditions which effectuates this purpose far more than paragraph 7 is paragraph 25. Accordingly, paragraph 25 is entitled to greater deference and should be followed.

The procurement laws of Guam allow the application of the above-described contract interpretation principle. 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. Thus, the rejection of the “reagent & supplies” part of all the bids submitted is legally permissible and should be allowed.

In conclusion, GMHA has not committed errors of law and/or facts in rendering its Decision on JMI’s protests and the award of the contract to Medpharm. There is a factual and legal basis for all of GMHA’s actions. GMHA therefore respectfully requests that its Notice of Decision be upheld.

Your kind attention and consideration in this matter are greatly appreciated.

Dated this 28th day of December, 2007.

The Law Offices of John S. Unpingco & Associates, LLC

By: 

John S. Unpingco, Esq.



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.



3. Dimension specification limited to a specific brand or brands. Is GMHA limiting the acceptable brand of Microbiology Analyzer to be considered. Please note virtually every equipment manufacturer differ in dimensions.

As per specifications indicated on the bid



DANIEL C. MATANANE
Administrator Supply Management

Acknowledgment of Receipt: Return acknowledgment to fax number 649-3640

Company

Print Name

Signature Date

**GUAM MEMORIAL HOSPITAL AUTHORITY
 BID SPECIFICATIONS**

Description

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

<p>Specs:</p> <p>* See bid specifications attached</p>	<p>Comments:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>APPROVED EQUAL BIDDING ON:</p>	
MFG: _____	+ Reference Products or Equivalent:
MAKE: _____	<u>Manufacturer</u>
BRAND: _____	<u>Model</u>
PLACE OR ORIGIN: _____	
DATE OF DELIVERY: _____	
<p><i>(GUAM) AFTER RECEIPT OF PURCHASE ORDER.</i></p>	



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 96913
TEL: (671) 647-2444 or 647-2330
FAX: (671) 649-0145

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.



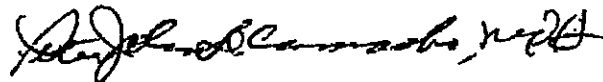
2 GAR § 3115 (d)(2)(a) also gives legal authority for the rejection of part of the bids submitted. It states that "after opening but prior to award, all bids or proposals may be rejected in whole or in part when ... the head of a Purchasing Agency determines in writing that such action is in the territory's 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 as 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