



OFFICE OF THE PUBLIC AUDITOR

PROCUREMENT APPEALS

In the Appeal of JMI Medical Systems Inc,
APPELLANT.

**DECISION AND ORDER
DENYING APPELLANT'S MOTION
FOR SUMMARY JUDGMENT**
Appeal No. OPA-PA-07-011

INTRODUCTION

This procurement appeal was filed on, December 12, 2007. This is the Decision of the Hearing Officer, Robert G.P. Cruz, Esq., denying the Appellant's Motion for Summary Judgment on an appeal filed on December, 2008, by JMI Medical Systems, Inc.'s (hereinafter "JMI"). Attorney Benjamin D. Sison, of Sison, P.C., regarding the Guam Memorial Hospital Authority's (hereinafter GMHA)'s solicitation for a Microbiology Analyzer. GMHA was represented by Attorney John S. Unpingco, Law Offices of John S. Unpingco & Associates.

BACKGROUND

1. This case involves GMHA's solicitation for bids for a Microbiology Analyzer to replace GMHA's current equipment, a "Vitek One". Bid Invitation No. GMHA Bid 024-2007) was issued on June 22, 2007.
2. Three bids were timely received in response to the RFP submitted by JC Marketing, Inc. (JCM"), Medpharm Corporation ("MedPharm") and JMI.

1 3. In contrast with JMI's and JCM's bid submissions, Medpharm's bid did not contain any cost
2 provision for reagents and supplies as required by the RFP.

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4 4. On August 10, 2007, GMHA sent letters to Medpharm and JMI requesting cost information
5 for certain reagents and supplies in the form of test cards specifically for the "Vitek 2" analyzer,
6 a particular Microbiology Analyzer model being proposed by both JMI and MedPharm in their
7 bids. JMI proposed a different machine which GMHA determined would not be feasible based
8 on its current equipment and procedures. JMI and MedPharm both submitted the requested cost
9 information to GMHA.
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11 5. On August 17, 2007 a decision was made by GMHA to award the contract to MedPharm. The
12 award was for two "Vitek 2" Microbiology Analyzers instead of one analyzer as required by the
13 RFP. (August 14, 2007 letter from Glenda Pangelinan to Peter John D. Camacho)

14 6. On August 31, 2007, JMI issued a protest letter to GMHA regarding the award to MedPharm.
15 The basis of the protest was that MedPharm's bid was non-responsive. Specifically, that
16 MedPharm did not include the cost of reagents and supplies in its initial bid submission in
17 contravention of RFP requirements under the "all or none" provision expressly provided for in
18 the RFP.
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20 **STANDARD OF REVIEW**

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23 In reviewing a Motion for Summary Judgment, the standard is whether there are a genuine
24 issues of material fact, and that if the facts were not in dispute, a party would win as a matter of
25 law.
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ANALYSIS

There is at least an issue of fact with regard to the price of test kits (reagents and supplies) and whether the Appellant's bid was materially compliant. Thus given that there is at least one material fact at issue, the standard is not met. We must give favorable light to the party opposing the summary judgment.

CONCLUSION AND ORDER

For the reasons stated above, we must DENY appellant JMI's Motion for Summary Judgment.

It is hereby ordered that defendant JMI's Motion for Summary Judgment is DENIED

Entered this 30th day of October, 2008



ROBERT G.P. CRUZ, ESQ.

Hearing Officer, Office of the Public Auditor