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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

In the Appeal of JMI Edison, Appellant.	Docket No. OPA-PA -18-001 **APPELLANT'S HEARING BRIEF**

I. INTRODUCTION

This submission of a Hearing Brief is offered as allowed by the Public Auditor's Order after Hearing/Scheduling Order issued on February 8, 2018. It supplements Appellant JMI-Edison's ("JMI") Notice of Appeal submitted on January 16, 2018, as well as JMI's Comments on Agency Report submitted on February 12, 2018.

II. JMI IS THE LOWEST PRICED RESPONSIVE BIDDER TO GMHA IFB 013-2017.

GMHA is in need of new Computed Tomography (CT) imaging Machines, and to respond to that need GMHA issued GMHA IFB 013-2017 for the Purchase, Installation, and Training of New CT Scanners (the "IFB"). IFB, **Hearing Exhibit 1.** In response, JMI submitted a bid to provide those machines that was $125,000.00 dollars less than the nearest other bidder. Despite this, GMHA rejected JMI's bid.

This protest has been brought because of GMHA's flawed rejection of JMI's bid. Simply put, GMHA incorrectly claims that JMI responded to the IFB with the wrong CT Scanner. A Bid Status notification was received by JMI on December 20, 2017, informing JMI that its bid

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submission was being rejected because of "nonconformance with specifications." Bid Status Notification, **Hearing Exhibit 2.** Specifically, JMI was told that "Bid rejected due to bid proposal did not meet bid specifications. Bid specification requested 64 slice acquisitions; bid submission identifies 32 slice acquisition." Bid Status Notification, **Hearing Exhibit 2.**[1] GMHA's determination was in error.

A. GMHA impermissibly seizes upon a single page of the Appendix provided in JMI's submission, and ignores the required specific Bid Submission forms submitted pursuant to the IFB's requirements.

GMHA asserts that it "rejected the bid from JMI-Edison because it was nonresponsive to technical specifications in its IFB for two CT scanners." Agency Statement, 3. To support this, GMHA cites to "specifically, Appendix Tab 5.1 Data Sheet, labeled System Hardware," as the reason that GMHA believed that JMI was only offering machines with "32 acquired slices." Agency Statement, 4. Under Guam law "a Responsive Bidder means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids." 5 G.C.A. § 5201(g). JMI is, under the law, a responsive bidder.

First, GMHA's reliance upon the appendix of JMI's submission in order to find grounds to reject its bid does not conform to the plain terms of the IFB. IFB §1-2 explains that "Each bid must be submitted on the prescribed Bid form contained within Appendix A [of the IFB] and shall be accompanied by all of the required forms and documents required in these Specifications." IFB §1-2, IFB, **Hearing Exhibit 1.** None of the required forms include the additional brochures provided by JMI in its bid package Appendix. Simply put, the IFB declared that an offeror like JMI should use the prescribed GMHA bid form and forms in the IFB

[1] Computed Tomography (CT) imaging provides a different form of imaging known as cross-sectional imaging. A CT Imaging system produces cross sectional images or "slices" of anatomy, like the slices in a loaf of bread. CT systems capable of imaging more slices simultaneously allow relatively larger volumes of anatomy to be imaged in relatively less time. More information is available at the FDA's website, https://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/MedicalImaging/MedicalX-Rays/ucm115318.htm.

appendix, and JMI's bid proposal encompassing those documents fully embraces the requirements of the IFB.

Nothing in JMI's bid proposal to GMHA on the mandated bid submission forms declares that JMI was offering "proposed item(s) that are not as specified in this solicitation." To the contrary, JMI's Bid Proposal— submitted on the exact bid proposal forms mandated by GMHA in the IFB— time and again declared an unequivocal intention to bid on CT machines as specified by GMHA. Those declarations of meeting the exact specifications of the IFB appearing in the actual Bid Proposal were ignored by GMHA. The declarations submitted to GMHA are clear, and recounted here:

Document	Description	Location
September 27, 2017, JMI Bid Cover letter	JMI-Edison Sales Manager Jean Grape explains without equivocation that "This proposal will comply with GMHA Procurement and Installation of New CT Scanners under GMHA IFB #:013-2017 requirement.	JMI Bid Submission p. 3; **Hearing Exhibit 3.**
Invitation for Bid Award	JMI-Edison President Eduardo R. Ilao signs the Invitation for Bid Award sheet agreeing to meet the IFB specifications "as per attached."	JMI Invitation For Bid Form; **Hearing Exhibit 4.**
Bid Proposal Form (IFB Form Appendix A)	JMI –Edison President Eduardo R. Ilao signs the GMHA official Bid Proposal Form and, without equivocation or deviation from the requirements of the IFB, "agrees to furnish all necessary labor,	JMI Bid Submission, Tab 2, p.1, IFB Form Appendix A; **Hearing Exhibit 5.**

	materials, equipment, tools, and services necessary for the purchase, installation, and training of new CT scanners, pursuant to Invitation for Bids No. GMHA IFB 013-2017 in accordance with the Specifications and other Contract Documents composing the Invitation for Bids for the sum of $1,224,040.00."	
Price Bid Form (IFB Form Appendix B)	JMI-Edison submits a detailed price bid providing specific and unequivocal bid prices for a "CT 64 cardiac capable system" and a "CT 64 non cardiac capable system." The specific machines offered are from the GE Revolution EVO line of products.	JMI Bid Submission, Tab 3, IFB Form Appendix B; **Hearing Exhibit 6.**

GMHA's conclusion that JMI failed to offer appropriate goods under the IFB also ignores the Bid Bond that JMI submitted along with its bid. As the Bond makes clear, JMI's surety has agreed to provide "sufficient surety for the faithful performance of [the] Contract...." JMI Bid Bond submission, **Hearing Exhibit 7.** The contract, of course, is for providing 64 slice machines operating with .625mm accuracy to GMHA. GMHA's conclusion that JMI was not responsive to the IFB ignores the plain language of the bid bond submitted by JMI guaranteeing performance in providing a 64 slice machine.

GMHAs determination of JMI's non-responsiveness also directly contradicts the plain language of the IFB itself. The IFB explains that the submission of a bid is "prima facie

evidence" that the bidder agrees to provide the goods exactly as required by GMHA. IFB, §1-4, **Hearing Exhibit 1.** Here, though GMHA's IFB declares that the submission of a bid is prima facie evidence that the bidder agrees to provide the CT machines as specified, GMHA nevertheless ignores that command of the IFB.

B. GMHA's flawed determination of JMI's responsiveness also ignores numerous performance images and specification included in JMI's submission.

Further cutting against GMHA's claim that JMI was offering non-conforming CT machines is the fact that JMI's proposal included an entire section of numerous Imaging performance images and Specifications that clearly showed CT machines operating at a full 64 detector rows and 64 slices per rotation. The very first page of the section explained that the offered machine would have the requisite "64 detector rows." Imaging performance images and Specifications, **Hearing Exhibit 8.** More, JMI's submission of performance imaging and specifications made it clear that the appropriate image slice size would be provided to GMHA. A sample image of a CT angiography of a patient with a BMI of 34 shows the image to be "0.625" mm in thickness. Imaging performance images and Specifications, **Hearing Exhibit 9.** And again, a sample image of a "mixed acquisition mode" shows the same "0.625" of slice thickness. Imaging performance images and Specifications, **Hearing Exhibit 10.**

This is repeated time and again with sample images for "low-dose and high quality CT for Circle of Willis," "Coronary CTA at low dose," "Thoracic-abdominal aorta," "peripheral angiography," "Low-dose PE," and "Fast High Resolution Scanning." Imaging performance images and Specifications, **Hearing Exhibits 11, 12, 13, 14, 15, 16.**

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C. GMHA's claimed uncertainty regarding whether JMI was providing CT machines with manufacturer upgrades to 64 slices strains credulity.

GMHA acknowledges that "JMI-Edison's bid included information on certain machines which could be upgraded to the specifications required by the IFB..." Agency Statement, 4. GMHA, again reaching beyond the plain offer contained in JMI's Bid Proposal, says that JMI was non-responsive because "JMI'Edison's bid included information on certain machines which could be upgraded to the specifications required by the IFB, but was not clear that the upgrade was part of the bid and not the base model." Agency Statement, 4. This is wrong. JMI's submission made it clear that each of the machines offered to GMHA did indeed include the 64 slice upgrade.

JMI provided to GMHA a "System Detail Description" of its bid packet. That packet section explained the details of the particular GE Revolution EVO systems that would be provided, and that included the "64 channel detector upgrade." JMI System Detail Description, **Hearing Exhibit 17.** JMI also, as part of its submission regarding eventual Equipment Delivery to GMHA, explained how it would be providing training on "work safety in the 64 slice CTs environment." System Detail Description, **Hearing Exhibit 18.**

D. GMHA's conclusion that JMI would not be providing 64 slice CT machines to GMHA contradicts JMI's existing history of providing 64 slice CT machines to GMHA and other Guam Health providers.

GMHA's conclusion that JMI would be non-responsive to the instant IFB is especially troubling given JMI's established history of providing 64 slice, .625mm CT machines to various medical providers, including GMHA in 2006 and the United States Naval Hospital, Guam, in 2014. JMI Statement of Qualification, **Hearing Exhibit 19.**

E. GMHA clearly did not review all of the Appendix submitted by JMI in its submission, as the Appendix shows conformance to the IFB's specifications.

JMI, in an effort to provide the maximum amount of information to GMHA about the GE Revolution EVO line of CT machines, provided GMHA with additional information and manufacturer brochures about those products in an "Appendix" to JMI's bid proposal. This appendix has been used by GMHA to support the claim that JMI sought to deviate from the specifications of the IFB and instead offer 32 slice detector machines that could not take .625mm thick slice images. Again, GMHA's use of the Appendix to determine responsiveness was unnecessary as JMI had, in the actual Bid Proposal documents mandated by GMHA, agreed to provide the CT machines as specified by GMHA. Nevertheless, GMHA clearly neglected to review the entire appendix, as JMI's appendix made it plain that the machines offered were indeed machines that would be equipped with the necessary 64 slice detectors, and that those detectors provided .625mm slice thickness. JMI System Configuration, System Hardware, Optional Cardiac Package information, Appendix, **Hearing Exhibits 20, 21, 22.**

F. GMHA ignores the clarifications it requested of JMI.

GMHA ignores information responses provided by JMI to GMHA's information requests. GMHA contends that "Each time, JMI Edison directed GMHA's attention to certain pages in its bid which did not clearly support JMI's assertion that the machines were responsive for both 64 acquired and 64 reconstructed." Agency Statement, 2. GMHA's claimed confusion over the nature of the bid strains credulity, and ignores the very direct responses provided by JMI helping GMHA identify the 64 slice nature of the offered CT machines. *See,* JMI Response to GMHA inquiries, attached to these comments as **Hearing Exhibits 23;** *See, also* PR 871-877.

IV. RULING REQUESTED

JMI submitted a Responsive bid to the IFB issued by GMHA. More, that bid was the lowest priced bid submitted. *See*, JMI Bid Opening Notes, attached as Exhibit F to JMI's Notice of Appeal filed on January 16, 2018. Based on the foregoing, JMI requests that its protest be sustained, and, as the lowest responsive bidder, the Agency be ordered to award it GMHA IFB 013-2017. Pursuant to 5 G.C.A. §5425 (h), JMI should also be awarded its costs in bringing this protest, and given the incredibly flawed nature of GMHA's initial determination of non-responsiveness, JMI also requests that its reasonable attorneys' fees be paid by GMHA.

Submitted this 14TH day of March, 2018.

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