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FACSIMILE TRANSMISSION

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TO:

FAX NO.:

**Anthony R. Camacho, Esq.
OPA Hearing Officer**

(671) 472-7951

**Aaron R. Jackson, Esq.
Attorney for GMHA**

(671) 477-5206

FROM: G. Anthony Long

DATE: February 12, 2008

RE: Motion of Motion and Memorandum for Order to Produce Documents and Witness

16 Pages including cover sheet

RECEIVED
OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

FEB 12 2008 *SR*

TIME: 1:52 PM
BY: *via fax (I. Conatacted p/yp)*
FILE No. OPA-PA-07-009

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Attorney for Pacific Security Alarm, Inc.

OFFICE OF THE PUBLIC AUDITOR

IN THE APPEAL OF PACIFIC SECURITY ALARM, INC. Appellant <hr/>) APPEAL NO: OPA-PA-007-009)) MOTION AND SUPPORTING) MEMORANDUM FOR ORDER TO PRODUCE) DOCUMENTS AND WITNESS)
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MOTION

Pacific Security Alarm, Inc., ("PSA") hereby moves for an order to compel the Guam Memorial Hospital Authority ("GMHA") to provide certain documentation in connection with GMHA Bid 023 - 2007 and to order the appearance of Peter John D. Camacho, M.P.H., Hospital Administrator/CEO at the hearing in this matter on February 21, 2008.

MEMORANDUM

The Hearing Officer, in a procurement appeal to the Office of the Public Auditor, possesses the power to "[r]equire parties to produce for examination those relevant witnesses and documents under their control." 2 GAR § 12109(c). The Hearing Officer also possesses the authority to "[c]ompel attendance and testimony of and production of documents by any employee of the government of Guam, including any employee of any autonomous agency, public corporation or board or commission." 2 GAR § 12109(I).

PSA, pursuant to the procurement code and the Sunshine Reform Act of 1999 requested inspection and copying of certain documentation relevant and necessary for this appeal.

Specifically, PSA requested to inspect and copy the following:

1. All written minutes of meetings held by or on behalf of the Guam Memorial Hospital ("GMHA") in connection with GMHA Bid 023 - 2007 which concerns the removal and replacement of the Fire Alarm System Project, which includes but is not limited to the decision to cancel or reject the submitted bids.
2. All recordings of meetings held by or on behalf of the Guam Memorial Hospital ("GMHA") in connection with GMHA Bid 023 - 2007 which concerns the removal and replacement of the Fire Alarm System Project, involving the decision to cancel or reject the submitted bids, which includes but is not limited to the decision to cancel or reject the submitted bids.
3. All memoranda and other writings discussing, concerning or mentioning the rejection or cancellation of GMHA Bid 023 - 2007 or the rejection of the bids submitted in response to GMHA Bid 023 - 2007.
4. The documentation and writings showing the amount set aside or budgeted for GMHA Bid 023 - 2007.
5. The documentation and writings showing how GMHA determined or decided on the amount set aside or budgeted for GMHA 023 - 2007.

A copy of the request is attached hereto as Attachment 1. GMHA declines to provide the requested documentation under the procurement code. A copy of GMHA's response to the procurement code request is attached hereto as Attachment 2. In response to the Sunshine Act request, GMHA indicated it would not make the requested documentation available or otherwise respond until on or after February 25, 2008, which is the latest possible date under the law. A copy of GMHA's response to the Sunshine Act request is attached hereto as Attachment 3.

GMHA is aware that the hearing in this matter is scheduled for February 21, 2008 and that February 25, 2008 is after the scheduled hearing date. GMHA declines to provide the documentation under the procurement code and delays providing it under the Sunshine Act until after the February 21, 2008 hearing in this appeal. Noticeably, GMHA does not deny the existence of any of the requested documentation. Instead, it has taken the tact to deny PSA access to the documentation prior to the hearing on the appeal thereby frustrating PSA's ability to prove its case on appeal.

The procurement law allows for cancelling or rejecting a bid when it is in the government's best interest as determined by the applicable regulations. 5 GCA § 5225. An issue presented on this appeal is whether the cancellation or rejection of PSA's bid was in the "best interest" of the government. GMHA contends the cancellation or rejection was in the government's best interest because of "insufficient funds." While GMHA regulations do not use "insufficient funds" as a basis for cancelling or rejecting a bid, they do provide that a bid may be canceled or rejected when the "prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds." See 26 GAR § 163 16(d)(2)(A)(4). This provision contains two components. First, the bid must exceed the available funds, and secondly, it must be determined that it would not be "appropriate to adjust quantities to come within available funds." The documentation PSA requests concerns these two components. In order to confirm that its bid exceeded the available funds, PSA needs to know the amount of funds GMHA made available for the solicitation. If, in fact, the bid exceeded the available funds, then it becomes material as to how and why GMHA determined that it would not be "appropriate to adjust quantities to come within available funds." This solicitation concerned the removal and

replacement of GMHA's fire alarm system which is a major safety issue. The question exists, therefore, of how and why GMHA concluded that it was not in the government's best interest or inappropriate to "adjust the quantities" to remove and replace the fire alarm system in critical sections of the hospital which includes, but is not limited to, the intensive care unit, surgical ward and maturity ward. The documentation concerning that determination is relevant, material and necessary on this appeal.

Another issue on this appeal is that of good faith. The requested documentation is relevant to that inquiry because if GMHA did not budget or set aside any funds for this solicitation or if the amount budgeted was artificially low, then this raises a question of good faith. Likewise, if GMHA did not consider or make any determination concerning adjusting the quantities of the bid, then an issue of good faith exists with respect to the cancellation or rejection of the bid.

Peter John D. Camacho, M.P.H., Hospital Administrator/CEO attendance at the hearing is necessary since he is the person who made the decision to cancel or reject the bid in this procurement action. Attached hereto as Attachment 4 is a copy of the notice of cancellation signed by Mr. Camacho. Thus, his testimony is relevant and necessary for PSA to establish the impropriety of the agency action in connection with the bid cancellation or rejection.

CONCLUSION

GMHA does not deny the existence of the requested documentation. Instead it seeks to deprive or otherwise preclude PSA access to the requested documentation for use in the February 21, 2008 hearing. The hearing officer should order GMHA to provide the requested

documentation and for Peter John D. Camacho, M.P.H., Hospital Administrator/CEO to be presence at the hearing on February 21 to testify.

Law Office of G. Anthony Long

By: 
G. Anthony Long

ATTACHMENT 1

LAW OFFICE OF G. ANTHONY LONG
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Telephone: 670.235.4802 / Fax: 670.235.4801

G. Anthony Long
gal@nmllaw.com

Kelley M. Butcher
kmb@nmllaw.com

February 8, 2008

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

Re: Sunshine Act Request

Dear Mr. Camacho:

I represent Pacific Security Alarm, Inc., ("PSA"). The procurement code requires each agency to maintain a complete record of each procurement. 5 GCA § 5249. All of these items are deemed public records and "any person may inspect and copy any portion of the record." *Id* at 5251. It is not necessary that the procurement award be made before inspection and copying of the record is permitted. *Id* at 5252(f). Additionally, the Sunshine Reform Act of 1999, 5 G.C.A. § 10101 *et seq.*, grants PSA the right to inspect and copy public records. Public records are defined as including any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency in any format, including an electronic format. 5 GCA § 10102 (d). Accordingly, PSA requests the right to inspect and copy the following:

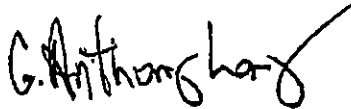
1. All written minutes of meetings held by or on behalf of the Guam Memorial Hospital ("GMHA") in connection with GMHA Bid 023 - 2007 which concerns the removal and replacement of the Fire Alarm System Project, which includes but is not limited to the decision to cancel or reject the submitted bids.
2. All recordings of meetings held by or on behalf of the Guam Memorial Hospital ("GMHA") in connection with GMHA Bid 023 - 2007 which concerns the removal and replacement of the Fire Alarm System Project, involving the decision to cancel or reject the submitted bids,

which includes but is not limited to the decision to cancel or reject the submitted bids.

3. All memoranda and other writings discussing, concerning or mentioning the rejection or cancellation of GMHA Bid 023 - 2007 or the rejection of the bids submitted in response to GMHA Bid 023 - 2007.
4. The documentation and writings showing the amount set aside or budgeted for GMHA Bid 023 - 2007.
5. The documentation and writings showing how GMHA determined or decided on the amount set aside or budgeted for GMHA 023 - 2007.

Please advise when the requested documentation will be available for inspection and copying. Also, let me know if there are any fees associated with this request.

Regards,



G. Anthony Long

cc: Lee Palmer, Pres., PSA
Aaron Jackson, Esq.

ATTACHMENT 2

MMST

Fax:4775206

Feb 12 2008 8:45

P.02

LAW OFFICES
MAIR, MAIR, SPADE & THOMPSON
A PROFESSIONAL CORPORATION
238 A.F.C. FLORES STREET
SUITE 201, PACIFIC NEWS BUILDING
HAGÁTÑA, GUAM 96910
TELEPHONE (671) 472-2089/90
FACSIMILE (671) 477-8208

February 12, 2008

VIA FACSIMILE ONLY: (670) 235-4801

G. Anthony Long, Esq.
Law Office of G. Anthony Long
P.O. Box 504970
Saipan, MP 96950

Re: In the Appeal of Pacific Security Alarm, Inc., Appeal No. OPA-PA-07-009
Documents Requested on February 8, 2008

Dear Anthony:

We respectfully reject your request for the documents mentioned in your letter dated February 8, 2008. We have made available all documents required under 5 G.C.A. § 5249, as the documents requested do not fall into the categories of documents required by Section 5249 to be included as part of the procurement record; and thus, the documents are not public records and need not be made available for inspection or copying under 5 G.C.A. § 5251.

To the extent your request is an official Sunshine Act Request, it will be addressed in a separate response.

Please let me know if you have any questions or comments regarding the matter.

Warm regards,



AARON R. JACKSON

ARJ:crg

L088017.ARJ

ATTACHMENT 3

MMST

Fax:4775206

Feb 12 2008 8:09

P.02

LAW OFFICES
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February 12, 2008

VIA FACSIMILE ONLY: (670) 235-4801

G. Anthony Long, Esq.
Attorney At Law
P.O. Box 504970
Saipan, MP 96950

Re: **Pacific Security Alarm: GMHA SUNSHINE REFORM ACT
OF 1999 REQUEST**

Dear Mr. Long:

As you know, this office is legal counsel to the Guam Memorial Hospital Authority ("GMHA"). We are in receipt of your recent Sunshine Reform Act request for information addressed to the GMHA Administrator Peter/John D. Camacho. On behalf of GMHA, we respond as follows.

In order to respond to your request, there is a need for GMHA to search for, collect, and appropriately examine more than ten (10) separate and distinct records. When demanded in a single request, such a need constitutes an unusual circumstance as that term is defined by 5 GCA Section 10103(e).

Pursuant to 5 GCA Section 10103(e)(2), an extension of the usual time limit prescribed for providing a response to your Sunshine Act request is authorized for up to ten (10) days. Accordingly, a response to your request will be provided no later than *February 25, 2008*. Of course, GMHA expressly reserves its right to assert any and all applicable objections to the production of the requested information.

Sincerely,



SANDRA E. CRUZ

RTT:lcr

cc: Mr. Peter/John D. Camacho, MPH
L085020.SEC.wpd

+5716432640

T-758 P 001/032

0:28am From-571 649 3640

+5716432640

T-758 P 002/032 F-057

- () Inability to provide future maintenance and services;
- () Exceeds budgeted amount.
- () High Price
- () Others:

// the lowest responsible and responsive bidder(s) for the line item(s) _____ (has) (have) been evaluated to be: _____

REMARKS: Thank you for your participation. Your bid bond is being returned for your disposition.



PETER JOHN D. CAMACHO, M.P.H.
Hospital Administrator

ATTACHMENT 4

Nov 10:20am From:871 649 3640

+6716493640

T-756 P 001/032 4-85'

Guam Memorial Hospital Authority
Aturidat Espetat Mimuriat Guahan

850 GOV. CARLOS CAMACHO ROAD
 OKA, TAMUNING, GUAM 96913
 TEL: 647-2444 or 647-2330
 FAX: (871) 649-0145

August 7, 2007

BID STATUS

Mr. G. Lee Palmer
 President
 Pacific Security Alarm, Inc.
 1851 A Rte. 16, Army Drive
 Dededo, Guam 96929

Bid no.: GMHA Bid 023-2007 **OPENED:** 07/13/07; 2:00 p.m.

For: GMHA Removal & Replacement of Fire Alarm System Project

The following is the outcome of subject bid as indicated by an "X":

canceled (in whole and in part) in the best interest of Guam Memorial Hospital Authority for reasons including, but not limited to:

- Insufficient funds
- No longer require the supplies, services or construction;
- Major change or amendment of specifications;
- Insufficient number of bidders;

// the bid for line items __, __, __] (is) [are] rejected in the best interest of Guam Memorial Hospital Authority for reasons including, but not limited to:

- Late submission of bid.
- No bid deposit submitted, as required by Section 11 of the General Terms and Conditions.
- Bid received after the time established by the invitation for bid.
- Not meeting the delivery requirement as stated in the invitation for bid.
- Nonconformance with specifications