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TO:**FAX NO.:**

Anthony R. Camacho, Esq.
OPA Hearing Officer

(671) 472-7951 and email

Aaron R. Jackson, Esq.
Attorney for GMHA

Via Email

FROM: G. Anthony Long**DATE:** February 27, 2008**RE:** PSA's Response to GMHA's Ex Parte Motion

6 Pages including cover sheet

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FEB 27 2008

TIME: 12:13 PM
BY: via fax *[Signature]*
FILE No. OPA-PA-07-001

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RECEIVED
OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT & APPEALS

FEB 27 2008

TIME: 12:13 PM

BY: *via fax*

FILE No. OPA-PA -07-009

Attorney for Pacific Security Alarm, Inc.

OFFICE OF THE PUBLIC AUDITOR

IN THE APPEAL OF)	APPEAL NO: OPA-PA-007-009
)	
PACIFIC SECURITY ALARM, INC.)	
)	PSA'S RESPONSE TO EX PARTE MOTION
Appellant)	
)	

Pacific Security Alarm, Inc, ("PSA") is somewhat surprised by the ex parte motion given that GMHA did not raise such concerns prior to recess of the hearing on February 21, 2008. In any event, Mr. Craig is the person who possesses the knowledge and expertise relating to adjusting the quantities of the fire alarm system. Such technical knowledge is beyond the expertise of Mr. Palmer, who is an accountant by training. Granting GMHA's motion will, in effect, constitute denying PSA the opportunity and right to effectively present its case. However, an accommodation is possible, if in fact, GMHA now sincerely recognizes the critical nature of the fire alarm project and that it is in the government and public's best interest to implement the project sooner rather than later.

The fire alarm bid was originally issued in 2004 and PSA was the lowest responsive and responsible bidder as shown by the document attached hereto as Attachment A. The contract was not awarded and the bid was not re-issued until three years later in 2007 when PSA was again the

lowest responsive and responsible bidder. Then, GMHA purported to "cancel" the solicitation for insufficient funds as opposed to adjusting the quantities and do the project in phases as allowed by 26 GAR § 16316(d)(2)(A)(4). Now, after commencement of the appeal hearing, GMHA appears to realize the urgency of this project. However, instead of agreeing to adjust the quantity and do the project in phases as allowed by 26 GAR § 16316(d)(2)(A)(4), GMHA claims that it is prepared to re-issue the bid.

GMHA's current representation concerning issuing a new solicitation is not made under oath and is not made by GMHA's administrator. This representation suggests that GMHA has now located or obtained additional funding for the project. If additional funding has not been located then the claim to issue a new bid is hollow. If, on the other hand, additional funding has been located and is certified, then GMHA should supplement the ex parte motion by stating under oath the amount of additional certified funding it has obtained for the fire alarm project. At that point, given the critical nature of the matter as GMHA now realizes, this matter should simply be remanded back to GMHA for award to the lowest responsible and responsive bidder to Bid 023-2007. This approach not only addresses GMHA's sudden awareness of the critical nature of the fire alarm project, but it also resolves this appeal. Anything less suggests that GMHA's ex parte motion is, in reality, an attempt to deprive or prevent PSA from effectively presenting its case on appeal.

Law Office of G. Anthony Long

By: 

G. Anthony Long

ATTACHMENT A



Guam Memorial Hospital Authority Aturidät Espetät Mimuriät Guahan

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



November 5, 2004

Pacific Security Alarm, Inc.
1406 N. Marine Drive, Suite 201
Tamuning, Guam 96911
Tel: (671) 646-2307
Fax: (671) 649-7245

Attention: William H. Craig, EVP
Richard M. Clark, General Manager

Subject: Notice of Intent to Award for GMHA-048-2004
Removal and Replacement of Fire Alarm System

Dear Gentlemen,

As a result of GMHA Bid Invitation No. 048-2004, Pacific Security Alarm, Inc.'s (hereafter referred to as PSA) offer/bid for Removal and Replacement of Fire Alarm System in the amount of \$594,231.00 is being considered for possible award.

In the Bid Phase, GMHA is guided by its Project Manual for determining the lowest responsive and responsible bidder. In accordance with GMHA's Project Manual (see Instructions to Bidders, Contractor's Qualification Statement, Pages 7 and 8 of 10, and Attachment H, Section 16050), GMHA requires that you identify PSA's professional staff (e.g., Master Electrician or Professional Engineer) that will oversee the subject Project, thus demonstrating PSA's capability to perform the subject Project. Therefore, GMHA requires that you identify that individual as soon as possible in order for GMHA to finalize its decision to award the Contract. Upon contract award, GMHA would then issue PSA a Notice to Proceed and allow PSA thirty (30) days to provide certification documents verifying proper certification of either the Master Electrician or Professional Engineer.

Also in accordance with GMHA's Project Manual, PSA must provide the Performance and Payment Bonds within ten (10) working days of issuance of the Notice of Intent to Award and prior to GMHA awarding the Contract (see Bid Bond, Page 1 of 2, and General Terms and Conditions, Bid and Performance Bond, Page 2).

Notice of Intent to Award
Page 2 of 2

Upon receipt of these documents and they are in order, the GMHA Supply Management Administrator will arrange a preconstruction meeting, at which time the Notice to Proceed will be issued to PSA.

GMHA does not accept or approve all of the proposed equipment, supplies or materials PSA provided in the bid submittal. As outlined in Attachment H of the Project Manual, all materials or equipment to be used in the Project must be submitted in six (6) sets to GMHA's A&E Consultant and Project Manager for review and approval to ensure they meet the design specifications and the intent of the Project. Any substitutes outside of the technical specifications must be reviewed and pre-approved by GMHA's A & E Consultants and Project Manager prior to PSA's procurement of said equipment, supplies or materials. Any substitution will be subjected to a contract change order either additive or deductive (see Project Manual, Instructions to Bidders, Substitutions, Page 4 and 5).

You are hereby advised that this Notice of Intent to Award should not be construed as an award by the Guam Memorial Hospital Authority. However, you are requested to submit your documents as outlined above or sooner, so that a final determination of award can be made.

Again, the award of the subject project is dependent upon your timely submission of the required documentation. GMHA looks forward to your prompt response.

Sincerely yours,


William I. McMillan, MBA, CHE
CEO/Hospital Administrator

