

**LAW OFFICE OF G. ANTHONY LONG**

*P.O. Box 504970*

*San Jose, Saipan, MP 96950*

*Tel: 670-235-4802 Fax: 670-235-4801*

*gal@nmilaw.com*

**FACSIMILE TRANSMISSION**

Should problems occur with this transmission, please contact this office by telephone or facsimile. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail. Thank you.

TO: OPA

FAX NO.: (671)4727951

FROM: Law Office of G. Anthony Long,

DATE: April 2, 2008

RE: PSA'S RESPONSE TO GNHA'S SECOND EXPARTE MOTION

Page(s) Including cover sheet: 4

**From Abraham office administrative assistant**

**RECEIVED**  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

APR 04 2008

TIME: 3:21 PM  
BY: Via Fax (E)  
FILE No. OPA-PA - 07-009

Law Office of G. Anthony Long  
P. O. Box 504970, Beach Road  
San Jose, Saipan, MP 96950  
Telephone No. (670) 235-4802  
Facsimile No. (670) 235-4801

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. )  
Appellant ) PSA'S RESPONSE TO GMHA'S  
SECOND EX PARTE MOTION

---

The Procurement Law's second prong for cancelling a bid is that it must be in the government's best interest as determined by the applicable regulations. 5 GCA § 5225. Pursuant to GMHA's regulations, a bid cancellation can occur only prior to opening of the bids. *See* 26 GAR § 16316(d)(1)[GMHA Regulations governing cancellation limited to action prior to bid opening]. After opening of the bid, GMHA can only reject all bids as opposed to cancelling the bid. *See* 26 GAR § 16316(d)(2)[GMHA Regulations governing rejection of bids limited to action after bid opening]. GMHA's action in this case was, in essence, a rejection of bids and not a cancellation as the decision to withdraw the solicitation or bid invitation was made after bid opening. This means that GMHA cancelling the bid is contrary to its own regulations as it cannot cancel a bid after bid opening. *See* 26 GAR § 16316(d). Nevertheless, if GMHA's use of the word "cancel" as opposed to "reject" is deemed to be mere semantics without any substantive differentiation, then GMHA's action still remains improper and contrary to law.

GMHA regulations allow for rejecting all bids after opening, but prior to an award, when

the Hospital Administrator determines in writing that such action is in the hospital's best interest for reasons. 26 GAR §16316(d)(2)(A). The regulation then proceeds to identify certain reasons which satisfy the "best interest" requirement. The reason GMHA seeks to rely upon in this case is that "prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds" See 26 GAR § 16316(d)(2)(A)(4) (emphasis added). However, the evidence at the OPA hearing conclusively establishes that despite, the obvious safety considerations associated with having an operational fire alarm system, at least in crucial sections of the hospital, GMHA did not consider or discuss adjusting the quantities factor as required by 26 GAR § 16316(d)(2)(A)(4).

GMHA fully realizes, appreciates and concedes the urgency of this project as shown by its second ex parte motion and the article in the April 3, 2008 edition of the Pacific Daily News, a copy of which is attached to GMHA's motion. The PDN article confirms that "cancellation" of the solicitation was inappropriate as, at a minimum, it has been and remains in the best interest of GMHA and the public to adjust the quantity of the project to allow installation of the fire alarm system in phases until additional funding was located and obtained. Now that such additional funding has been located and obtained, it is appropriate and in the best interest of GMHA and the public to recognize the cancellation was not in conformity with law and remand with instructions for GMHA to award the bid to PSA so that installation of the fire alarm system commences sooner rather than later. Moreover, given that the amount of PSA's bid is now public knowledge based on its dissemination in the PDN article, any remand for a new solicitation will simply be unfair and unjust to PSA as all subsequent bidders will know PSA's bid. This is particularly so since this is the second time PSA has been the lowest responsive and responsible bidder in

connection with GMHA's solicitation for a fire alarm system. To the extent, GMHA seeks to inject technicalities, such as the alleged omission of one resume, as justification for not awarding the contract to PSA, such technicalities can be cured so that installation of the fire alarm system can commence sooner rather than later, especially given the urgency as GMHA now acknowledges. See PSA Exhibit 12 at p. 3 ¶ 23.

As an alternative for awaiting the issuance of a decision, GMHA and PSA can settle this matter and move forward for PSA beginning the installation on the basis of a settlement. Indeed, GMHA's procurement regulations provide that

**[t]he Hospital Administrator shall have the authority, prior to the commencement of an action in court governing the controversy, to settle and resolve a protest of an aggrieved bidder, offerer, or contractor, actual or prospective, concerning the solicitation or award of a contract.**

26 GAR § 16901(g)(emphasis added). Even more importantly, the OPA hearing officer possesses the power to hold a settlement conference to seek resolution of a pending matter. 2 GAR § 12109(a). Thus, this appeal and the urgency PSA has insisted has always been present in connection with the fire alarm system can be achieved by settlement. PSA is willing to seek such a resolution under the auspices of the hearing officer as opposed to continued litigation, especially given the statutory rights for judicial review possessed by GMHA and PSA.

Law Office of G. Anthony Long

By:   
G. Anthony Long