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OFFICE OF THE PUBLIC AUDITOR

In the Appeal of)	APPEAL NO. OPA-PA-07-004
)	
TEAL PACIFIC LLC)	
)	COMMENTS ON AGENCY REPORT
)	OF GMHA BY APPELLANT
Appellant.)	
)	
)	
)	
_____)	

The Agency Report of Guam Memorial Hospital Authority takes positions which cannot be supported by either the record or the law.

GMHA states that Teal's protest was not timely.

GMHA is clearly incorrect. Teal filed its protest within ten days of having any reason to believe GMHA cancelled the first invitation simply to ensure that GMHA would receive that which Teal had already bid. Teal protested the cancellation of the first invitation to bid upon learning of the reasons GMHA cancelled its first invitation. Teal at the same time protested the second invitation to bid as it should not have been issued. These facts are set forth in the first to paragraphs of Teal's Grounds for appeal.

In the Appeal of TEAL PACIFIC LLC
Appeal No. OPA-PA-07-004
July 2007

GMHA states *"Teal Pacific's appeal fails to set forth any valid basis for its claims that GMHA's cancellation of Bid No. 008-2007 was illegal an abuse of discretion, arbitrary and capricious and contrary to 5 GCA section 5525"*

GMHA is clearly in correct. To justify the cancellation GMHA states that "the invitation did not provide for consideration of all factors of significance to the Hospital." The problem with GMHA's logic is that the original invitation for bids (GMHA Bid No. 008-2007) clearly did provide for such consideration as it solicited for the exact same machine (an AMX-4) as did the revised invitation (GMHA Bid No. 016-2007). While the second invitation did not permit equivalent machines to be bid, Teal won the first invitation without bidding a equivalent, it won it by bidding an AMX-4. Accordingly, whether GMHA was conscious of it, the invitation contemplated GMHA's need for an AMX-4. In fact, Teal and another company responded with bids for AMX-4 and not equivalents. Teal was the lowest bidder. Teal was prepared to provide the AMX-4.

So why, after receiving at least two bids for AMX-4s (Teal being the winning bid), would GMHA cancel the invitation, and on the basis that its first invitation did not contemplate the need for the very machines (the AMX-4s) that were bid? Clearly, GMHA received was it wanted and what it now says it wants. So why cancel the first invitation?

Just because an agency *states* its invitation "did not provide for consideration of all factors significant" does not justify canceling of a bid. For such a cancellation to be justified the cancellation had to be based *on the fact* the agency did not did not provide for consideration of all factors significant not just GMHA's statement that such is the

In the Appeal of TEAL PACIFIC LLC
Appeal No. OPA-PA-07-004
July 2007

case. In other words, the GMHA cannot just pay lip service to the law to justify whatever it wants for whatever its motivations are.

It is Teal's position that GMHA did consider all relevant factors in making the first invitation. The first invitation asked for an AMX-4 or its equivalent. Not surprisingly, the invitation yielded bids for the AMX-4. ***GMHA strains credulity when it states that it felt compelled to issue a second invitation and eliminate the words "or its equivalent" from the first invitation requesting an "AMX-4 or its equivalent" because it had not considered that it needed an AMX-4 when the AMX-4 is the very machine Teal bid and won as a result of the first invitation.***

The fact GMHA says it did not take into consideration all factors significant does not make it so as a matter of law. Even assuming that this is GMHA's subjective belief (which Teal argues it is not), given the facts at bar there is no rational basis for canceling the first bid so that Teal could solicit that which it had already secure.

GMHA states: "Teal Pacific's appeal alleges that there is no difference between Bid No. 008-2007 and 016-2007. . . . For these reasons, Teal Pacific's appeal should be dismissed."

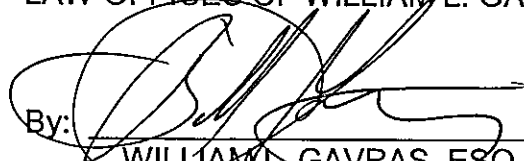
In fact, Teal explicitly recognized the "differences" in the two invitations. See e.g., Teal's Grounds for Appeal pg 1, paragraph 3 as well as the rest of Teal's Appeal. Teal's reference that the "specifications had not changed" was in the context that reasons given for the change in specifications could not be justified (and thus were immaterial) because GMHA had already received a winning bid for the machine (the

In the Appeal of TEAL PACIFIC LLC
Appeal No. OPA-PA-07-004
July 2007

AMX-4 from Teal) that it now states that it required and ludicrously states needed a second invitation to obtain.

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Date: July 2, 2007.


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CERTIFICATE OF SERVICE

I, William L. Gavras, Esq., hereby certify that on the 2 day of July, 2007, I caused a copy of the Comments on Agency Report of GMHA by Appellant to be served upon Maria T. Cenzon-Duenas of Mair, Mair, Spade & Thompson.

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Date: July 2, 2007.

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