

MAIR, MAIR, SPADE & THOMPSON  
A Professional Corporation  
Attorneys at Law  
238 A.F.C. Flores Street  
Suite 801, Pacific News Building  
Hagåtña, Guam 96910  
Telephone: (671) 472-2089/2090  
Facsimile: (671) 477-5206

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

JUL 09 2007

TIME: 4:47 pm  
BY: [Signature]  
FILE No. OPA-PA 07-004

Attorneys for Appellee  
Guam Memorial Hospital Authority

OFFICE OF THE PUBLIC AUDITOR

In the Appeal of	)	APPEAL NO. OPA-PA-07-004
	)	
TEAL PACIFIC LLC	)	
	)	<b>GUAM MEMORIAL HOSPITAL</b>
	)	<b>AUTHORITY'S REBUTTAL OF</b>
	)	<b>APPELLANT'S COMMENTS</b>
	)	<b>TO AGENCY REPORT</b>
	)	
Appellant.	)	
	)	
	)	
	)	

Appellee Guam Memorial Hospital Authority, by and through its counsel of record, Maria T. Cenzon-Duenas, Esq. of Mair, Mair, Spade & Thompson, hereby submits its rebuttal in support of its Agency Report and Statement filed with the Office of the Public Auditor ("OPA") on June 22, 2007.

**I. APPELLANT'S PROTEST OF THE CANCELLATION OF GMHA BID No. 008-2007 WAS UNTIMELY.**

Appellant Teal Pacific asserts that GMHA's determination that its protest of Bid No. 008-2007 (the "Original IFB") was untimely is in error and contends that its protest of the Original IFB was made "upon learning of the reasons GMHA cancelled its first

invitation," which occurred when the second solicitation, GMHA Bid No. 016-2007 was issued.<sup>1</sup> Nothing in the facts of this appeal supports Appellant's contention and Appellant proffers nothing relevant in its Comments.

As the undisputed facts establish, on February 28, 2007, GMHA delivered a notice of Cancellation of Solicitation on GMHA Bid No. 008-2007 to all bidders, including Appellant.<sup>2</sup> The notice stated that "[GMHA] find[s] it in the best interest of Guam Memorial Hospital Authority to cancel the solicitation for the subject pursuant to GMHA Procurement Rules and Regulations 3-301.04.02 1(b) the solicitation did not provide for consideration of all factors of significance to the Hospital."<sup>3</sup>

If Teal Pacific believed that the cancellation of the Original IFB was "illegal, an abuse of discretion, arbitrary and capricious and contrary to 5 GCA section 5525," as it posits in its Appeal,<sup>4</sup> it had the opportunity to protest the cancellation within the time period provided in Section 9-101.03.1 of the GMHA Procurement Rules and Regulations, which is 14 days after the protestor knows or should have known of the facts giving rise thereto, or March 22, 2007. With regard to the cancellation of solicitations, the GMHA Procurement Rules and Regulations provide for such cancellation when "the solicitation did not provide for consideration of all factors of significance to the Hospital."<sup>5</sup> A notice of the cancellation is then sent to all businesses that submitted proposals which (1)

---

<sup>1</sup> Comments on Agency Report of GMHA by Appellant at p. 1 (7/2/07)(referred to herein as "Comments").

<sup>2</sup> Exhibit 6C to Procurement Record filed on June 18, 2007.

<sup>3</sup> Id.

<sup>4</sup> Appellant's Statement of Grounds for Appeal at p. 3 (6/7/07).

<sup>5</sup> GMHA Procurement Rules and Regulations Section 3-301.04.02.

identifies the solicitation, (2) briefly explain the reason for the cancellation; and (3) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies, services or construction.

Adequate notice of the cancellation as required under the GMHA Procurement Rules and Regulations was provided to each of the bidders, including Teal Pacific. If the reasons for the cancellation were then unclear to Appellant, it could have -- and *should* have filed a protest within the time provided. The Regulations do not mandate that GMHA detail the reasons for such cancellation and the notice stating that the solicitation was cancelled was sufficient under the regulations.

In the recent case of J&B Modern Tech vs. Guam International Airport Authority, decided in the Superior Court of Guam, the court was asked to issue an injunction to require the Antonio B. Won Pat International Airport Authority to reverse the cancellation of a solicitation on the grounds that the notice was deficient because it stated only that the cancellation was based on the "inadequate specifications."<sup>6</sup> The court denied the bidder's request to reinstate the original solicitation, finding that, under Guam law, "all that is required is that the notice of cancellation **'briefly explain the reason for the cancellation.'**"<sup>7</sup> Similarly, the GMHA Procurement Rules and Regulations require only that GMHA "briefly explain the reason for the cancellation," which it did specifically by

---

<sup>6</sup> J&B Modern Tech vs. Guam International Airport Authority (GIAA), et al., Superior Court of Guam, Case No. CV0732-06, *Findings of Fact and Conclusions of Law* at p.5 (Barrett-Anderson, J.)(6/25/07)(a copy of which is attached for your easy reference).

<sup>7</sup> Id. at p. 6 (citing to 2 GAR § 3115(d)(1)(D)(ii)(emphasis in original).

stating that the Original IFB "did not provide for consideration of all factors of significance to the Hospital."<sup>8</sup>

Appellant's contention that the defect in GMHA's cancellation of the Original IFB was not evident to it until the issuance of the Reissued IFB is absurd. It seems that the only basis for such a claim is to attempt to assert its position as the "lowest bidder" under the Original IFB which GMHA has already determined was defective in its specifications. As discussed in greater detail, below, Appellant was *not* the lowest bidder under the specifications of the Original IFB. The lowest bidder under the Original IFB was Medpharm, which had bid on the *equivalent* of a GE AMX-4. Thus, if Teal Pacific wanted to protest the cancellation of the Original IFB, it should have done so within the time provided.

**II. GMHA'S CANCELLATION OF GMHA BID NO. 008-2007 BECAUSE IT FAILED TO CONSIDER ALL FACTORS OF SIGNIFICANCE TO THE HOSPITAL IS SUPPORTED BY THE RECORD.**

Teal Pacific contends that it "won" the Original IFB because its bid was for an AMX-4, which GMHA ultimately determined in the Reissued IFB was the only type of portable x-ray machine which would satisfy its requirements. Appellant argues that "whether GMHA was conscious of it, the [Original] invitation contemplated GMHA's need for an AMX-4. ... Teal was the lowest bidder. Teal was prepared to provide the AMX-4"<sup>9</sup>

Appellant completely ignores the fact that the very reason why GMHA had to cancel the Original IFB was because it allowed for bids of equipment which were the

---

<sup>8</sup> Exhibit 6C to Procurement Record filed on June 18, 2007.

*equivalent* of the AMX-4. The Bid Specifications for the Original Bid clearly called for "General Electric (GE) AMX-4 Plus Mobile or Equivalent."<sup>10</sup> Of the three bidders submitting their bids, the lowest bidder was MedPharm with a Bid Offer of \$33,641.67, and bidding on a Shimadzu MobileArt Portable X-Ray.<sup>11</sup> Appellant's bid was *higher* than MedPharm, with a bid of \$52,500.00 and bidding on a GE AMX-4 Plus.<sup>12</sup>

After the bid opening, GMHA determined that the existing equipment at the Hospital was compatible *only with* the GE AMX-4 Plus. However, because the Original IFB called for bids on the GE AMX-4 Plus or its equivalent, GMHA would have had to award the contract to MedPharm, despite the fact that the equipment was not compatible with existing Hospital equipment. It was on this basis that GMHA cancelled the solicitation on the basis that it failed to consider all of the factors of significance to the Hospital.

Appellant now argues that the Original IFB should be reinstated and that it be awarded the contract because it was the lowest bidder for the AMX-4, which GMHA determined it really wanted. Appellant completely ignores the fact that it was *not* the lowest bidder in the Original IFB and that if the Original IFB were to be reinstated, Teal Pacific would *not* be awarded the contract. Moreover, if the Original IFB were reinstated, GMHA would be compelled to purchase equipment which is wholly incompatible with its existing equipment and, therefore, useless.

---

<sup>9</sup> Comments at p. 2.

<sup>10</sup> Procurement Record at Tab 1 (Guam Memorial Hospital Authority Bid Specifications) at Cover Page.

<sup>11</sup> Procurement Record at Tab 3A.

In the case of J&B Modern Tech vs. GIAA, the court considered the chance that an aggrieved bidder would have received the contract award but for the agency's error.<sup>13</sup> Finding that the protesting bidder failed to make such a showing, the court denied relief. Similarly, in this case, Teal Pacific simply would not have been awarded the contract under the Original IFB because the lowest bidder was MedPharm, not Appellant.

Having determined that the Specifications under the Original IFB were defective in that it allowed for the solicitation of equipment which was *not* compatible with existing equipment at the Hospital, GMHA properly cancelled the bid. The specifications of the Reissued IFB clearly addressed the problem which GMHA had with the original bid and even provided detailed justification for requiring only a GE AMX-4 Plus to the exclusion of equivalent equipment.

//  
//  
//  
//  
//

---

<sup>12</sup> Procurement Record at Tabs 3C and 4.

<sup>13</sup> J&B Modern Tech vs. GIAA, at p. 5, quoting Alfa Laval Separation, Inc. v. United States, 175 F.3d 1365, 1367 (Fed. Cir. 1999) ("the protestor must show that there was a substantial chance it would have received the contract award but for that [agency's] error.").

For these reasons, Teal Pacific's protest was properly denied by GMHA. GMHA, therefore, requests that the appeal be dismissed and GMHA awarded the relief it seeks as set forth in its Agency Report.

Dated this 9th day of July, 2007.

**MAIR, MAIR, SPADE & THOMPSON**  
A Professional Corporation  
Attorneys for Appellee  
Guam Memorial Hospital Authority

By:   
MARIA T. CENZON-DUENAS

P078021.MTCD

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**IN THE SUPERIOR COURT OF GUAM**

J&B MODERN TECH,  
Plaintiff,  
vs.  
Guam International Airport Authority  
(GIAA), Government of Guam, and  
Jesus Q. Torres, Executive Manager.  
Defendant.

**CASE NO. CV 0732-06**  
**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

This matter came on regularly for Trial on April 6, 2007, before the HON. ELIZABETH BARRETT-ANDERSON. Plaintiff was present and represented by Attorney Kevin J. Fowler. Defendants Guam International Airport (GIAA), and Jesus Q. Torres, in his official capacity as Executive Manager of the GIAA appeared through counsel Attorney R. Todd Thompson. Defendant Government of Guam did not appear except through the GIAA. After testimony was taken the Court DENIED Plaintiff's prayer for mandamus and injunctive relief. The Court reserved on the issue of declaratory relief. The Court now issues these Findings of Fact and Conclusions of Law.

**I  
Findings of Fact**

1. This Court has jurisdiction over this case pursuant to Title 5 G.C.A. § 5707. The Plaintiff appeals from an Invitation For Bid (hereinafter referred to as "IFB") issued by GIAA on March 1, 2005, to provide service maintenance on five (5) specific pieces of equipment at GIAA, namely: (a) Passenger Loading Bridges; (b) Main Terminal Generator; (c) Stationary and Trailer-Mounted Generators; (d) Macerator/Triburator; and (e) Inbound Baggage Handling System. The award was intended to made for each of the five separate items.

2. Several bids were received, including J&B's. After the bids were opened, but prior to the award of any contract under this IFB, GIAA cancelled the IFB. GIAA's Executive

R. TODD THOMPSON

DATE: 6-25-07  
TIME: 1:25  
BY: RT



1 Manager determined, in writing, that the Specifications in the IFB were inadequate for the  
2 following reasons:

3 (a) The original IFB required that the successful contractor provide only  
4 preventive maintenance service of the equipment. However, after the solicitation had been issued,  
5 but before the contract had been awarded, GIAA determined that it was "more economical" for  
6 GIAA to combine the preventive service maintenance contract with the requirement that the  
7 contractor also be responsible for carrying an inventory of spare parts. As such, the  
8 Specifications which had been issued were inadequate and needed to be changed to allow for the  
9 combination of parts and services;

10 (b) GIAA further determined in writing that it was necessary to amend the  
11 Specifications to add the requirement that the contractor maintain an inventory of spare parts to  
12 the IFB and to also require that the contractor implement a system of "bar coding to eliminate  
13 using GIAA-purchased parts for vendor's other contracts;"

14 (c) GIAA also determined in writing that the following provisions needed to be  
15 added to the Specifications to address inventory issues, which were not in the original  
16 Specifications: quarterly inventory report mandates, audit provisions and a provision that the  
17 contractor would be penalized for misuse of inventory for non-GIAA projects (including  
18 cancellation of the contract, fines, etc.).

19 (d) Lastly, GIAA determined that the five (5) year term was too long, and that,  
20 therefore, the Specifications were inadequate to meet GIAA's needs, which included the right to  
21 mandate an "annual performance review" as a condition of the contract renewal – a factor that  
22 was not indicated in the IFB.

23 4. GIAA concluded ultimately that it would be more cost-effective for the agency  
24 to hire individuals to service the equipment in-house. Commencing on July 10, 2006, GIAA  
25 management advertised for personnel to be hired by GIAA to perform the maintenance on these  
26 contracts. In August, 2006, GIAA commenced the hiring and/or promotion of individuals to

1 perform maintenance on the equipment that was part of the IFB. GIAA has hired a total of seven  
2 (7) individuals and promoted four (4) employees in-house to perform the services which would  
3 have been provided by the successful contractor under the IFB.

4 5. In November, 2006, personnel from FMC Jetway Systems arrived in Guam in  
5 order to provide training to these personnel on the maintenance of the passenger loading bridges,  
6 at an estimated cost to GIAA of \$20,000.00. The employees who underwent training by FMC  
7 Jetway were certified to perform the maintenance of this proprietary equipment. Since the  
8 implementation of GIAA's in-house maintenance programs the agency has realized a cost-  
9 savings, and fewer complaints from the carriers.

10 6. GIAA's Torres concluded that "[c]ancellation of the IFB was and is in the best  
11 interest of the Territory in terms of cost-savings, efficiency of services and fortification of the  
12 skills of GIAA employees." He continued, "[i]f the bid were not cancelled, GIAA would end up  
13 with services it does not need and cannot use because similar services are currently being  
14 provided in a more efficient and less costly manner."

#### 15 CONCLUSIONS OF LAW

##### 16 I.

17 J&B announced at trial that it would not be seeking damages, namely recovery of  
18 costs or bid preparation costs, in the instant action. What J&B is seeking is to have the Court  
19 declare that GIAA cannot cancel an invitation to bid without providing a meaningful reason for  
20 the cancellation. Simply stating that the bid is cancelled due to "inadequate specification" does  
21 not provide the bidder a reasonable understanding of the reasons for the cancellation. In so  
22 declaring, J&B seeks injunctive relief that would require GIAA to "undo" that which has already  
23 been done.

24 Federal authorities make it plain that a party seeking injunctive relief faces a  
25 difficult burden. Injunctive relief is not a matter of right but is an "extraordinary" and "drastic"  
26 remedy which should not be granted unless the movant, by clear showing, carries the burden of

1 persuasion. 11A Wright, Miller & Kane, Federal Practice and Procedure, Civil 2d §2948, at pp.  
2 129-130 (1995); Huang v. Holiday Inns, Inc., 594 F. Supp. 352, 355 (C. D. Cal. 1984). Thus, it  
3 is J&B's burden to show that it is entitled to injunctive relief in this case. However, in the instant  
4 case the movant's burden is particularly high due to the nature of the injunctive relief being  
5 requested. In this instance, J&B requests to enjoin the cancellation of the subject bid. Yet it is  
6 undisputed that **the bid invitation has *already* been cancelled**. Thus, the requested injunction,  
7 though phrased as prohibitory in nature, is in fact "mandatory" because it would require GIAA  
8 to affirmatively *undo* what has already been done. "Such 'mandatory preliminary relief' is subject  
9 to heightened scrutiny and should not be issued unless the facts and law clearly favor the moving  
10 party." Dahl v. HEM Pharmaceuticals Corp., 7 F.3d 1399, 1403 (9<sup>th</sup> Cir. 1993); *quoting*  
11 Anderson v. United States, 612 F.2d 1112, 1114 (9th Cir.1980).

12 Courts have a limited role to play in the procurement process; and they do not sit  
13 to tell agencies what their needs are or to whom they should award contracts. Parcel 49C Ltd.  
14 Partnership v. United States, 31 F.3d 1147, 1153 (Fed. Cir. 1994). If GIAA is forced to "cancel  
15 the cancellation," then GIAA would effectively be left with no choice but to undo months of  
16 alternative planning. In addition, J&B is obligated in this case to show that the factors favoring  
17 injunctive relief weigh "heavily and compellingly" in its favor because it seeks to disrupt the  
18 *status quo*. Kikumura v. Hurley, 242 F.3d 950, 955 (10<sup>th</sup> Cir. 2001). As indicated, here the bid  
19 has already been cancelled and, moreover, GIAA has long ago implemented an alternative means  
20 of meeting its needs, including the hiring and training of new employees.

21 The disappointed or frustrated bidder has an especially formidable task. The  
22 aggrieved bidder bears the burden of showing that cancellation of the bid was "arbitrary or  
23 capricious." Parcel 49C Ltd. Partnership v. United States, 31 F.3d 1147, 1153 (Fed. Cir. 1994).  
24 "A necessary corollary to that burden is consideration of the discretion accorded to procurement  
25 officials." Id. The aggrieved bidder must demonstrate that the challenged agency decision is  
26 either irrational or involved a clear violation of applicable statutes and regulations. Banknote

1 Corp. of America, Inc. v. United States, 365 F.3d 1345, 1351 (Fed. Cir. 2004). Moreover, "to  
2 prevail in a protest the protestor must show not only a significant error in the procurement  
3 process, but also that the error prejudiced it." Data General Corp. v. Johnson, 78 F.3d 1556, 1562  
4 (Fed. Cir. 1996). To demonstrate prejudice, "the protestor must show 'that there was a substantial  
5 chance it would have received the contract award but for that error.'" Alfa Laval Separation, Inc.  
6 v. United States, 175 F.3d 1365, 1367 (Fed. Cir. 1999) (*quoting Statistica, Inc. v. Christopher*,  
7 102 F.3d 1577, 1582 (Fed. Cir. 1996)). "Finally, because injunctive relief is so drastic in nature,  
8 a plaintiff must demonstrate that its right to such relief is clear." See WIT Assocs. v. United  
9 States, 62 Fed. Cl. 657, 660-661 (Ct. Cl. 2004). The bid protestor must produce "clear and  
10 convincing evidence"; and it must further show that the benefits of the injunction outweigh the  
11 harm to the government, and that the award of injunctive relief is in the public interest:

12 To warrant injunctive relief, the movant must demonstrate, by  
13 **clear and convincing evidence**, that either: (1) the agency lacked  
14 a rational or reasonable basis for its cancellation decision; or (2)  
15 the procurement involved a clear and prejudicial violation of  
16 applicable statutes and regulations. See *126 Northpoint Plaza*, 34  
17 Fed. Cl. at 107; *Logicon, Inc. v. United States*, 22 Cl. Ct. 776, 782  
18 (1991); *CACI Field Servs., Inc. v. United States*, 13 Cl. Ct. 718,  
19 725 (1987), *aff'd* 854 F.2d 464 (Fed. Cir. 1988). Additionally,  
injunctive relief is appropriate only where the plaintiff can  
demonstrate that it will suffer irreparable harm, that the harm to  
plaintiff outweighs the harm to the government, and that the award  
of injunctive relief is in the public interest. See *FMC Corp. v.*  
*United States*, 3 F.3d 424, 427 (Fed. Cir. 1993); *ATA Defense*  
*Indus., Inc. v. United States*, 38 Fed. Cl. 489, 505 & n.10 (1997).

20 Wetsel-Oviatt Lumber Co. v. United States, 43 Fed. Cl. 748, 753 (Ct. Cl. 1999) (emphasis added).

21 J&B maintains that GIAA's March 15, 2006 "Bid Status" letter, which cancelled  
22 the bid invitation inadequately specified the reason for the cancellation. J&B claims that while  
23 the notice stated that the cancellation was due to "inadequate specifications," it was somehow  
24 deficient because it "did not identify any specification it deemed to be inadequate." This  
25 contention falls well wide of the mark.

26 GIAA contends that Guam law does not support J&B's interpretation, and that

1 nothing requires GIAA or any other agency to specify “cogent and compelling” reasons *in the*  
2 *cancellation notice*.. Section 5225 provides for bid cancellation “when it is in the best interests  
3 of the Territory” and it merely requires that “[t]he reasons therefor shall be made part of the  
4 contract file.” The only other provision that applies is GAR Section 3115, which expressly  
5 governs the matter of a cancellation notice to the bidders. Section 3115 does not in any manner  
6 require any detailed explanation of the reasons for cancellation. To the contrary, all that is  
7 required is that the notice of cancellation “**briefly explain the reason for the cancellation.**” 2  
8 GAR § 3115(d)(1)(D)(ii).

9           Here, GIAA briefly explained the reason for the cancellation by filling in the  
10 following on the appropriate blank on its standard “Bid Status” form: “Inadequate specifications;  
11 to be RE-BID.” No statute or rule requires any further discussion of the matter in such a notice  
12 of cancellation. Likewise, no statute or rule requires GIAA to state “cogent or compelling”  
13 reasons in any notice of cancellation of a bid. The “cogent and compelling reasons” standard is  
14 not part of Guam’s procurement statutes, found at Title 5 of the Guam Code Annotated. Instead,  
15 this language is found only in the Administrative Rules and Regulations (at 2 GAR § 3115(b)).  
16 This language is expressly cast in terms of overall “policy;” and it does not furnish the basis for  
17 attacking the sufficiency of reasons stated in the notice of cancellation. The provision does not  
18 state that cogent or compelling reasons must be given to the disappointed bidders – it merely  
19 states, as a matter of policy, that there *exist* such reasons.

20           GIAA’s notice of cancellation was sufficient on its face. The reason stated,  
21 “inadequate specifications” is plainly sufficient to justify cancellation of a bid. Title 5 G.C.A.  
22 section 5225 of the Guam Procurement Law vests GIAA with the authority to cancel a  
23 solicitation. The Bid Specifications issued in the instant case indicated that GIAA “**reserves the**  
24 **right to cancel the award of any contract at any time before the execution of same.**” IFB,  
25 Instructions to Bidders at ¶ 9, p. 6. This notice complies with the requirements of Section 3115  
26 of the Guam Procurement Regulations, as codified in Title 2, Guam Administrative Regulations,

1 Division 4, Chapter 3.

2 Section 3115(d)(2) of the Guam Procurement Regulations dictates the procedure  
3 by which a solicitation may be cancelled after bid opening but prior to award, as in this instance;  
4 and it allows GIAA, as the Purchasing Agency, to cancel the solicitation by rejecting all of the  
5 bids, if doing so is "in the territory's best interest." The Procurement Regulations expressly  
6 recognize that canceling a bid due to "ambiguous or otherwise inadequate specifications," as was  
7 the case here, satisfies the "best interest" requirement. 2 GAR § 3115(d)(2)(A)(ii).

8 The Court is not persuaded by In re: Protest of Singleton Electric Company, Inc.,  
9 1994 WL 780923 (D.C.C.A.B. 1994), for the proposition that inadequate or ambiguous bid  
10 specifications do not constitute a "cogent or compelling reason" for cancelling a bid. The  
11 Singleton court, noted that cancellation is generally not appropriate where there is no prejudice  
12 to others AND "when an award under the solicitation would serve the actual needs of the  
13 government." Id. In Singleton, in contrast to the instant case, the government agency did not  
14 dispute that an award under the deficient solicitation would meet the agency's actual needs. Id.  
15 Here, J&B seeks to advance the result of, in effect, compelling GIAA to proceed with a bid  
16 proposal that would not benefit public interest.

17 Even if all of the foregoing could be overcome, J&B still bears the burden of  
18 showing its entitlement to injunctive relief by demonstrating that "had it not been for the alleged  
19 error in the procurement process, there was a reasonable likelihood that [it] would have been  
20 awarded the contract." Data General Corp., 78 F.3d 1556, 1562 (Fed. Cir. 1996); *see also* Maint.  
21 Eng'rs v. United States, 50 Fed. Cl. 399, 426 (2000) (assuming *arguendo* agency's evaluation of  
22 factor was defective, no prejudice as other low ratings made the award of a contract unlikely);  
23 WIT Assocs. v. United States, 62 Fed. Cl. 657, 664 (Ct. Cl. 2004). No such showing has been  
24 made here.


25 It remains for the court to balance the respective hardships to the parties and the  
26 public. Fort Sumter Tours, Inc. v. Andrus, 564 F.2d 1119, 1124 (4th Cir. 1977). The court must

1 bear in mind the practical considerations of efficient execution and performance of government  
2 contracts, the public interest in avoiding excessive or unnecessary costs, and the contractor's  
3 entitlement to fair treatment. Princeton Combustion Research Labs., Inc. v. McCarthy, 674 F.2d  
4 1016, 1022 (3rd Cir. 1982); Housing Auth. v. Pittman Constr. Co., 264 F.2d 695, 697-98 (5th Cir.  
5 1959). The court may not substitute its judgment for that of the awarding authority, but may only  
6 act where the authority's decision is irrational or arbitrary. Princeton, id.; Pittman Constr., id. at  
7 703 (recognizing right of awarding authority "to be wrong, dead wrong; but not unfairly,  
8 arbitrarily wrong").

9                   The Court holds that J&B has not met it's burden under injunctive and declaratory  
10 relief. The Court finds GIAA's actions legal and appropriate. Although it would be reasonable to require  
11 government agencies to provide greater explanation to bidders in circumstances of cancellation of the bid  
12 invitation, particularly considering that vendors generally go through great expense, and good faith effort  
13 in reliance upon the government's invitation, Guam law does not require a governmental agency to do so  
14 in the cancellation notice. Nothing restricts an agency from providing more than the required minimum  
15 explanation in other ways based on administrative policies and procedures of the agency. In many ways  
16 this would improve public relations with its vendors. But to judicially order an agency to provide a  
17 detailed recitation of reasons and causes for the cancellation in the notice document is beyond this Court's  
18 jurisdiction. This Court leaves such matters to GIAA the Board of Directors of GIAA, and overall public  
19 scrutiny of governmental action.


20                   CONCLUSION

21                   For the foregoing reasons, and in accordance with these standards, judgment is  
22 rendered in favor of GIAA, Jesus Q. Torres, and the Government of Guam. All parties to assume  
23 their own attorneys fees and costs. GIAA to submit a JUDGMENT for the Court's signature.

24  
25                     
26                   **HONORABLE ELIZABETH BARRETT-ANDERSON**  
                    Judge, Superior Court of Guam

I do hereby certify that the foregoing  
is a full true and correct copy of the  
original or file in the office of the  
Clerk of the Superior Court of Guam

JUN 25 2007

  
Peter M. Miodasaki  
Deputy Clerk, Superior Court of Guam