

# 34

OFFICE OF THE PUBLIC AUDITOR

In the Appeal of )  
)  
JMI Systems INC. )  
)  
)  
Appellant. )

APPELLEE'S EXHIBIT LIST

Docket No. OPA-PA-07-011

Appellee, Guam Memorial Hospital Authority, submits the following Exhibit List:

- A. Amendment No. 3 to GMHA Bid 024-2007
- B. Guam Memorial Hospital Authority Bid Specifications
- C. Bid Offer Page
- D. Letter dated November 27, 2007 from GMHA to JMI
- E. Excerpts of Glendalyn Pangelinan's Deposition Transcript
- F. Excerpts of William Kando's Deposition Transcript
- G. Excerpts of Jean Grape Ko's Deposition Transcript

Submitted this 15<sup>th</sup> day of October, 2008.

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PROCUREMENT APPEALS

OCT 15 2008

TIME: 4:45 PM  
BY: Juba  
FILE No. OPA-PA 07-011

The Law Offices of John S. Unpingco & Associates, LLC

By:   
Georgette Bello Concepcion, Esq.



# Guam Memorial Hospital Authority Aturidåt Espetåt Mimuriåt Guåhan



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

July 12, 2007

## AMENDMENT #3 FOR GMHA Bid 024-2007

### Automated Microbiology Analyzer

This amendment is being issued in regards to JC Marketings clarifications:

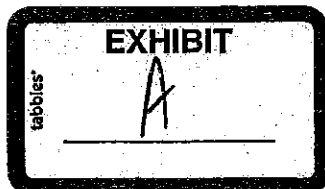
1. Prices for supplies (panels) are also to be provided at time of bid opening or it will be incorporated to the cost of the equipment with consideration of the estimated 3,000 tests per annum.

**The reagent and supplies cost will be separate from the instrument itself.**

2. Is the Microbiology Analyzer to be linked with the existing equipments to facilitate the laboratory's work flow or it will be stand alone. Should it be compatible and be linked, is cost of computer software to be provided at time of bid.

**The one thing that is an absolute requirement in terms of interoperability is with the lab's information system. This part is stated on page 2 of the specs "Interoperability with LIS". Vendor will have to ensure that their product can link up to our LIS computer. The specs do say that they do cover the costs for the LIS interface with their equipment.**

**The current Lab's LIS vendor is CERNER which most major equipment vendors are able to link to the system.**



3. Dimension specification limited to a specific brand or brands. Is GMHA limiting the acceptable brand of Microbiology Analyzer to be considered. Please note virtually every equipment manufacturer differ in dimensions.

**As per specifications indicated on the bid**



DANIEL C. MATANANE  
Administrator Supply Management

Acknowledgment of Receipt: Return acknowledgment to fax number 649-3640

\_\_\_\_\_  
Company

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**GUAM MEMORIAL HOSPITAL AUTHORITY  
 BID SPECIFICATIONS**

Description

		Quantity	Unit	Unit Price	Extension
1.	Automated Microbiology Analyzer	1	each	_____	_____

<p><b>Specs:</b></p> <p>* See bid specifications attached</p>	<p><b>Comments:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
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**APPROVED EQUAL BIDDING ON:**

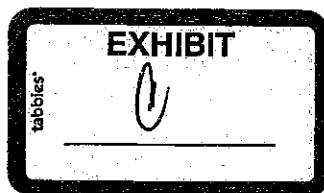
MFG: _____	+ Reference Products or Equivalent:
MAKE: _____	<u>Manufacturer</u>
BRAND: _____	<u>Model</u>
PLACE OR ORIGIN: _____	
DATE OF DELIVERY: _____	
<i>(GUAM) AFTER RECEIPT OF PURCHASE ORDER.</i>	



**BID OFFER**

TOTAL BID AMOUNT: \$ \_\_\_\_\_

BID BOND AMOUNT: \$ \_\_\_\_\_  
(15% of Total Bid Amount)





# Guam Memorial Hospital Authority Aturidåt Espetåt Mimuriåt Guåhan



850 GOV. CARLOS CAMACHO ROAD  
OKA, TAMUNING, GUAM 96913  
TEL: (671) 647-2444 or 647-2330  
FAX: (671) 649-0145

November 27, 2007

Mr. Rey M. Vega  
General Manager  
JMI Medical Systems, Inc.  
125 North Marine Drive  
Tamuning, Guam 96913

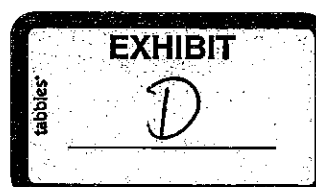
**RE: JMI Protest Letter dated August 31, 2007 and its Request to Reconsider dated September 13, 2007 on GMHA Bid No. 024-2007**

Dear Mr. Vega,

The Guam Memorial Hospital Authority (GMHA) has carefully reconsidered its decision regarding your protest letter dated August 31, 2007. In your protest letter, you alleged that Medpharm's proposal did not comply with the solicitation as Medpharm was nonresponsive as it did not submit a price for reagent supplies in its bid. Whereas, your company did.

The solicitation's project description indicated that GMHA was seeking to procure an Automated Microbiology Analyzer. Indeed, both Medpharm and JMI correctly submitted bids or prices for the analyzer. The problem was with the bids or prices for the reagent and supplies. Amendment No. 3 sought to address this issue, but, Amendment No. 3 was ambiguous in that it did not state what reagents and supplies were to be obtained. This was critical as the respective analyzers proposed by Medpharm and JMI could utilize a number of different test cards. Thus, GMHA had a situation where Medpharm did not propose a bid or price on the reagents and supplies, but, JMI proposed a bid on prices on reagents and supplies different from what was needed by GMHA. Neither of these fulfills GMHA's needs.

Yet, GMHA's need for the analyzer itself is critical and its ability to procure one in the future is very dubious due to funding constraints. Therefore, pursuant to GMHA 9-101.05, I have determined that the award of the contract without delay is necessary to protect the substantial interests of the hospital. Furthermore, under paragraph 25 of the solicitation's General Terms and Conditions, I have decided that it is in the best interest of GMHA and the public to cancel the portion of the solicitation concerning the reagent and supplies and to reaffirm the Hospital's previous award to Medpharm for the microbiology analyzer.



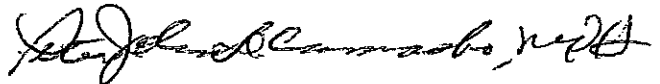
2 GAR § 3115 (d)(2)(a) also gives legal authority for the rejection of part of the bids submitted. It states that "after opening but prior to award, all bids or proposals may be rejected in whole or in part when ... the head of a Purchasing Agency determines in writing that such action is in the territory's best interest for reasons including, but not limited to, ... ii) ambiguous or otherwise inadequate specifications were part of the solicitation". See 26 GAR § 16316(d)(2)(a).

While the solicitation contains an "all or none" provision in paragraph 7 of the General Terms and Conditions, this is not dispositive in this case. Paragraph 25 of the General Terms and Conditions which allows partial acceptance or rejection comes after that paragraph. "Where a repugnancy is found between clauses, the one which essentially requires something to be done to effect the general purpose of the contract is entitled to greater consideration than the other." 17A Am. Jur.2d Contracts § 384 citing International Union of Operating Engineers v. J.A. Jones Const. Co., 240 S.W.2d 39 (Ky. 1951). As the primary purpose of the solicitation was to procure the analyzer and as paragraph 25 essentially carries out this purpose, paragraph 25 is therefore entitled to greater deference. 5 GCA § 5002 states that "the principles of law and equity, including the Uniform Commercial Code, the law merchant ... shall supplement" the Guam Procurement Law.

In sum, the award of a contract for the procurement of an automated microbiology analyzer is made to Medpharm. The bids for reagent supplies are all rejected.

Please note that you have the right to administrative and judicial review of this decision pursuant to Chapter 9 – 103.07.

Sincerely,



Peter John D. Camacho, M.P.H.  
Hospital Administrator / CEO

1 Q Did you assist in the preparation of this amendment?

2 A Yes. I said the -- I wanted to know information  
3 about the reagent supplies and it was important that the  
4 instrument itself had the capability of interfacing with the  
5 lab's existing lab information system which is a Sterner  
6 product.

7 Q Thank you. I would like some clarification regarding  
8 the actual process that the hospital took in evaluating the  
9 bid. I'd like to really start from the beginning.

10 A Okay.

11 Q The RFP indicates that it was issued in June 22,  
12 2007, is that correct?

13 A I would say yes, just based on the date that's on  
14 there, yeah.

15 Q What point were you then involved in the procurement  
16 of this Microbiology Analyzer?

17 A Only at the time that the bid packets were open. I  
18 mean, as far as the actual submission -- throughout this whole  
19 process, I'm the one who initially submitted the specs and  
20 that was my initial involvement in the -- in the advertising  
21 of it and the dates when people submit their actual proposals,  
22 I'm not at all familiar or knowledgeable about what happens  
23 there. They call me to tell me when the bid proposal packet  
24 meeting is going to happen and that was -- if I remember  
25 correctly at the cafeteria conference room so that's where I



1 attended so it was from there.

2 Q What happened on that day at the cafeteria conference  
3 room?

4 A I remember there were three submissions; MedPharm, JC  
5 Marketing and JMI. There were people from Materials  
6 Management, myself, and the representatives from the three  
7 companies and one by one the bid proposals were opened.

8 MR. UNPINGCO: Excuse me. Can we establish a  
9 date for this?

10 BY MR. SISON: (Continuing)

11 Q Yes. When did this conference occur?

12 A I can't -- I can't tell you right off what date it  
13 was.

14 Q Was it the same day that the actual bids by the  
15 prospective bidders submitted their bids?

16 A I wanna say yes. Again, the only thing I recall is  
17 we were in the conference room and the packets were on the  
18 table. Whether or not that was the very same day they  
19 submitted it, I wouldn't know. I don't recall if I saw them  
20 walking with it or if Materials Management already had it. I  
21 really can't say.

22 Q Were you there when the bids itself were opened?

23 A Yes.

24 Q The original provision under the RFP indicated that  
25 they were supposed to be delivered by 8:30, July 6, 2007. Is

1 that your recollection?

2 A I can't recall.

3 Q Okay. In any event, was it sometime in July when  
4 this occurred?

5 MR. UNPINGCO: Let me just interrupt for a  
6 moment. Let's see if we can establish dates. I think the  
7 amendments here did change the dates for the submittal dates.  
8 It went from July 6th to the 11th under Amendment 1.  
9 Amendment 2, it went from July 11th to July 15th. Is that  
10 correct?

11 A Based on what's written here, that looks like July  
12 13th is the date.

13 MR. UNPINGCO: I'm referring to Exhibit C and D.  
14 C is Amendment No. 1 and D is Amendment No. 2. Was it in this  
15 time frame that the bid opening occurred, the July 13 time  
16 frame, 2007?

17 A I believe so. July strikes me as when it -- that  
18 process started.

19 MR. UNPINGCO: The summer time?

20 A Yes, yes.

21 MR. UNPINGCO: Okay.

22 BY MR. SISON: (Continuing)

23 Q So what happened once the bids were open?

24 A I remember Materials Management going through a  
25 process of checking the documents. Once that was done,

1 really, I left the meeting and I was told that I would be  
2 given the packet at a later time for review.

3 Q Did that happen?

4 A Yes.

5 Q Do you recall when you received the packets for  
6 review?

7 A No, I don't. Let me see. I know when -- I wanna say  
8 it was -- because I did my review in August. I wanna say in  
9 August. Early August. And that's based on some of my notes  
10 and my letter of recommendation.

11 MR. UNPINGCO: What year is this, please?

12 A 2007.

13 BY MR. SISON: (Continuing)

14 Q You received three bid packages, is that correct?

15 A Yes.

16 Q Do you recall who they were from?

17 A Yes. It was JC Marketing, JMI, and MedPharm.

18 Q Other than you, who was responsible for evaluating  
19 these bids?

20 A In the last evaluation process, Microbiology. I got  
21 input from the department itself. I shared with them the  
22 proposals. Fe Bactad was -- she's the Microbiology Supervisor  
23 and I had asked her to review it with me.

24 Q You indicated this was the last review process. How  
25 many review processes did you undergo in this RFP?

1           A     For this particular one I had the packet just once  
2 and it was while I had the packet that I had questions and I  
3 submitted that to Lola to clarify some items.

4           Q     Who's Lola?

5           A     Lola Pangelinan, Materials Management.

6           Q     Okay. So you reviewed each of these bids on your  
7 own?

8           A     Yes.

9           Q     Not a group?

10          A     No.

11          Q     Who else reviewed these bids besides you? You said  
12 Fe Bactad?

13          A     Fe Bactad.

14          Q     Was there anyone else that reviewed the bid?

15          A     John.

16          Q     You reviewed these bids individually and not as a  
17 group?

18          A     Yes. Well, Fe and myself, you know, as far as the  
19 lab component, yes. John Benavente was separate. I wasn't  
20 there when he reviewed the packet.

21          Q     Other than those three that was there, anybody else  
22 responsible for reviewing the packet?

23          A     No.

24          Q     Would it be fair to say that you three encompassed  
25 the selection committee for the award of the Microbiology

1 Analyzer?

2 A I would say, yes.

3 Q You made reference to the fact that the records  
4 contained the bid from JC Marketing. I didn't also get to see  
5 that. Do you recall what type of machine was being offered by  
6 JC Marketing?

7 A Yes, it was BD product. It was the BD Phoenix.

8 Q Was JC Marketing, from your understanding,  
9 disqualified from contingent with respect to the award of the  
10 --

11 A I --

12 MR. UNPINGCO: We object to that question because  
13 she's not competent. She stated she's not competent as to the  
14 procurement matters on the technical parts.

15 BY MR. SISON: (Continuing)

16 Q But you did review JC Marketing's bid?

17 A Yes.

18 Q And what was your impression of that bid?

19 A One, it was -- the platform itself seemed to be an  
20 instrument that was meant for higher volume. It was also a  
21 fairly new instrument on the market and it was a different  
22 product altogether than what we were using currently. We  
23 don't use any BD automated system in terms of ID.

24 Q Okay. I'm going to show you what is pre-marked as  
25 Exhibit F. Are you familiar with this document?

1 Q Correct.

2 A A second time?

3 Q A third time.

4 A No.

5 Q So you --

6 A The only second review was based on the bid protest  
7 that the -- with the items that were mentioned here that were  
8 not included in MedPharm's proposal. And the only thing I  
9 really looked at was I just went back directly to the proposal  
10 and looked for those specific items. That all I did.

11 MR. UNPINGCO: And what were those specific  
12 items? What was listed in the e-mail you sent on September 5,  
13 2007?

14 A My response to this was given to Materials  
15 Management. It was response to the bid protest.

16 BY MR. SISON: (Continuing)

17 Q In response to the letter that Jim Barnhart sent to  
18 you?

19 A Yes.

20 Q After you responded, did you review the bids another  
21 time after that?

22 A No.

23 Q So you weren't asked to look at the bids a third time  
24 without considering the provisions in the bids concerning the  
25 reagents and supplies?

1 A No.

2 Q We're almost done. It's my understanding that GMH  
3 has received its Vitek 2 machines, is that correct?

4 A It has received one of them.

5 Q Are they operational?

6 A Yes, they had the installation and training.

7 Q So you're expecting another one?

8 A Yes. We're just waiting for them to make room; to  
9 remove a cabinet for more room to put the instrument.

10 Q Were there test kits purchased for the machine?

11 A I have. Actually, I'm still waiting.

12 Q Who did you purchase these test kits from?

13 A I want -- a requisition? I'm trying to remember if  
14 the purchase orders have come back. I submitted the  
15 requisition. I want to say MedPharm. Yes.

16 Q Did you ask for other bids from other suppliers for  
17 these test cards?

18 A No.

19 Q So only MedPharm?

20 A I put -- at the time -- only because we -- actually,  
21 the instrument came sooner than I expected it to come and I  
22 wasn't ready for it, to be honest with you. They came with  
23 the instrument with their batch of kits for the install, but I  
24 didn't have reagents for after the install.

25 Q That's how you ordered?

1 A Yes, yes.

2 Q How much did you order?

3 A I can't recall. I can't say.

4 Q One month's supply? Two month's supply?

5 A No, no. I want to say at least three months. I  
6 usually don't order anything -- one, because it's a brand new  
7 instrument, we need to do parallel studies so that's going to  
8 take additional or as far as usage, additional than what we  
9 would normally do because there's -- we needed to compare it  
10 to our old instrument and the new instrument.

11 Q What happened to the old machine?

12 A It's still there.

13 Q You're still using it?

14 A Yes. Because we can't convert to the new one until  
15 we get reagents.

16 Q Actually, now I have to ask some questions. You  
17 indicated that you did look at JMI's Option 1 for the Vitek 60  
18 machine.

19 A Yes.

20 Q And is it your understanding that if you had  
21 purchased that machine, it would have been the lowest cost or  
22 lowest priced analyzer?

23 A No, I actually -- you know, once I found out that it  
24 was the older model no longer being manufactured, it wasn't a  
25 consideration at all.



1 you.

2 MR. UNPINGCO: I have a few.

3  
4 CROSS EXAMINATION

5 BY MR. UNPINGCO:

6 Q Going back to the funding issue, first, the funds to  
7 purchase the Microbiology Analyzer processor were initially  
8 budgeted or included for the FY06 funding, is that correct?

9 A Yes, sir.

10 Q However, later on, sometime in '07, it was decided  
11 that of all the projects that was nearing completion and  
12 because the FY05 funding was soon to expire, it was determined  
13 by -- it was a managerial decision to shift the funding for  
14 the purchase of the Microbiology processor from '06 to '05, is  
15 that correct?

16 A Yes, sir.

17 Q At that time, there was no procurement action that  
18 had been started yet, is that correct? At the time that the  
19 decision was made in '07 to use the FY05 funds for the  
20 processor, there was no procurement action yet?

21 A There had been a requisition already established.

22 Q Yes, but as far as the solicitation, the RFP's.

23 A That I'm not sure.

24 Q Okay. And as far as the extensions of the ability to  
25 use FY05 funding, you asked for an extension when? Do you

1 recall?

2 A I asked for an extension, I believe it was in July.

3 Q July of what year?

4 A Of '07.

5 Q '07. When was the funds for the '05 going to expire?

6 A They were going to expire -- obligation by August  
7 '07, liquidation by November, end of each month.

8 Q End of '07?

9 A End of August. End of November.

10 Q End of November '07?

11 A '07.

12 Q They would have had to have been liquidated?

13 A Yes. After that, I don't get to spend any more.

14 Q So then you went in for an extension?

15 A I asked for an extension.

16 Q Before that?

17 A But it was not granted.

18 Q Okay. So --

19 A They said, no, you don't get any more time for '05  
20 beyond November '07. Use it or lose it.

21 Q I believe there's an e-mail here that I recall seeing  
22 that you were told in no uncertain terms by Ms. Haliday?

23 A Mollie Mahany.

24 Q Mahany.

25 A Yes.

1 Q Here. I'm looking at Exhibit A. Mahany, Mollie  
2 Mahany, 9 August 2007?

3 A Uh-huh, yes, sir.

4 Q It says in this, and I quote, "please send me an  
5 e-mail stating that all FY2005 will be obligated by August 31,  
6 2007. There will be no additional deviation or continuation  
7 of this funding."

8 A Yes, sir, and I e-mailed her. I had e-mailed her  
9 "GMHA will be obligating all FY05 funds prior to August 31,  
10 2007 and understands there will be no additional deviation or  
11 continuation of this funding."

12 Q And that e-mail you're referring to is dated?

13 A Dated --

14 Q 13th of August 2007?

15 A 13 August 2007.

16 Q So that means you're at the very end of the line for  
17 the 2005 program?

18 A Yes, sir.

19 Q Or funding, excuse me. And so you stood a great  
20 chance if the funds weren't spent then the hospital stood a  
21 chance of not having a Microbiology processor period?

22 A Yes, sir.

23 Q If the funds were --

24 A Losing the funds.

25 Q Losing the funds?

1 A Yes, sir.

2 Q The '06 funding was already spoken for by that time,  
3 is that correct?

4 A Yes, sir.

5 Q So therefore, the '05 funds were the only source of  
6 funding for the Microbiology processor at that point in time?

7 A Yes, sir.

8 Q Okay.

9 A Because at that time, '06 funds were not in jeopardy  
10 of running out of time.

11 Q Yes. But you had projects earmarked for those funds  
12 already?

13 A Yes. We had -- but to make room for the Microbiology  
14 system in '05, '05 projects had to --

15 Q Shifted to '06?

16 A And '07.

17 Q And those were already firmly set?

18 A And approved to go into those years by HHS.

19 Q So if you had thought of shifting the '05 funding for  
20 the processor to '06, you would probably have wound up getting  
21 a negative response from HHS?

22 A Well, it was in '06. We said we want to move '06 to  
23 '05.

24 Q You're going to shift it back is what I'm talking  
25 about.

1           A     To shift it back wouldn't have made sense because  
2 there was no other project that I could have completed in a  
3 timely manner to complete the drawdown of '05. I would have  
4 lost the '05. So that's why HHS said, yes, that makes sense,  
5 the Microbiology will be the fastest one to go.

6                   MR. UNPINGCO: Okay, that's all the questions I  
7 have.

8                   MR. SISON: I actually have no further questions.

9                                   oo0oo

10                                   [DEPOSITION CONCLUDED AT 9:57 A.M.]

11

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May 2, 2008: Jean Grape Ko

1 the August 10th letter that's specified?

2 A. Yes, but it's stated to provide 3,000.

3 Q. 3,000, that's what I'm after.

4 A. And that's why I asked them to give us the number of  
5 kits to provide this 3,000 tests.

6 Q. 3,000 tests. But you didn't know what tests these  
7 were going to be, just tests?

8 A. Yes.

9 Q. So long as something could be tested --

10 A. Yes. So if that is given, example, the test card,  
11 and we provided the price per box here in -- attached --  
12 supporting for GNI, GPI, NNI, YBC, so whatever they will ask  
13 for a test card, that's the price that we will provide.

14 Q. But each of these test cards has different  
15 components, right? Like the gram negative susceptibility  
16 test, you got three, you can be GNS 204, and that's got a  
17 bunch of other tests underneath it; GNS 206, a bunch of tests  
18 underneath it.

19 A. Yes, it's -- That's the composition of per test card.

20 Q. So you didn't know the number, the mix of which -- of  
21 these specific tests were being required by GMH?

22 A. No.

23 Q. Until you got the August 10th letter which specified  
24 which of these tests underneath the subset; is that correct?

25 A. Yes.

Appeal No. OPA-PA-07-011

EXHIBIT G

May 2, 2008: Jean Grape Ko

1 Q. See, the problem here that I'm having is that these  
2 test kits, they go for different subsets. It goes for about  
3 three pages listing all these chemicals that can be tested,  
4 and this is from your data that you submitted; correct?

5 A. Yes, sir.

6 Q. For instance, the gram negative susceptibility test  
7 cards, you can have GNS 204, GNS 206, 209, 210, GNS 121, 122,  
8 127, -28, -29, -30, -31, -32, and it goes on, -33, -34, -35,  
9 -36, -37, 140, 141, 142, 143, 144, 145, 146, 147; is that  
10 correct?

11 A. Yes, sir.

12 Q. Based on the data -- this is all based on the data  
13 that you have furnished.

14 Now, the different tests that I just read out to you  
15 on this, gram negative, say a 204 series test and a 206 series  
16 test, are those interchangeable?

17 A. I'm sorry?

18 Q. The tests, if you give me a GNS 204 and I wanted a  
19 test in GNS, say 209, are those interchangeable?

20 A. I cannot answer that question.

21 Q. Because they're both gram negative susceptibility  
22 test card --

23 A. Yeah, it still depends on the labs tech that will  
24 determine which one they will use.

25 Q. Or what it is they're testing for; correct?

May 2, 2008: Jean Grape Ko

1 A. Yeah. They will just choose in this test card that  
2 they need to use.

3 Q. Yeah, for instance -- see, what's bothering me here,  
4 like under gram negative susceptibility card, GNS 204, 206,  
5 and 209, it lists amoxicillin, a general antibiotic, and  
6 clavulanic acid in all three of these subsets, but I don't  
7 know if those are -- those are interchangeable?

8 A. No, if you will see, there are some antibiotics which  
9 consist in GNS 204, not in the GNS 209.

10 Q. Yes, I agree. But I'm talking about the ones that  
11 are similar in all three, whether those are interchangeable  
12 and your response earlier was that depends on the lab tech?

13 A. Yeah, I -- in my -- I am not too familiar with these  
14 test cards honestly, so --

15 Q. Okay. Now, earlier this morning, Mr. Vega testified  
16 that the bid package was very clear to you, that is, to us,  
17 meaning your team, it was very clear what was being requested.

18 Is that your opinion that it was very clear? Do you  
19 share that opinion with Mr. Vega?

20 A. Yes, it's very clear with us that we need to provide  
21 the price of the supplies for the 3,000 tests, which we did  
22 provide in our bid.

23 Q. Notwithstanding the fact that you didn't know which  
24 specific tests?

25 A. Yes, that's why we provided the general test card,



May 2, 2008: Jean Grape Ko

1 which will be after the bid evaluation of the user. They will  
2 identify which specific test they will provide.

3 Q. So you're basing the clarity of the specification  
4 just on the number of tests to be done per annum?

5 A. Yes, and that we asked our vendor, because they are  
6 the one, the expert, to identify how many kits that will be  
7 used in 3,000 tests.

8 Q. Okay. By vendor, you mean like Vitek, the  
9 manufacturer of the machine?

10 A. The dealer of the Biomerieux. Biomerieux is the  
11 manufacturer of Vitek.

12 Q. Biomer- --

13 A. Biomerieux.

14 Q. How do you spell that?

15 A. B-I-O-R-E-I-M-E-U-I-X. Like that. Oh!  
16 B-I-O-M-E-R-I-E-U-X.

17 Q. So is it fair to say if you're just going by the  
18 number of tests alone, that does not tell you the specific  
19 type of tests that are to be performed, just the number?

20 A. Is it fair for what?

21 Q. Is it fair to say that when you're looking at that  
22 requirement for 3,000 tests to be done per year, it's only  
23 telling you how many tests are to be done, it doesn't tell you  
24 the exact test that are to be performed?

25 A. Yes, sir, because it's stated that to supplies for

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1 the 3,000 tests, yeah, and in our understanding, the hospital  
2 will tell us which specific test card will be used after.

3 Q. So then you can pick and choose the appropriate test  
4 card?

5 A. (Witness nodded head.)

6 Q. Now, the specifications also go on to state that the  
7 vendor must ensure that supplies delivered are those of the  
8 latest release from the manufacturer with sufficient updates  
9 with the needs of the laboratory. Does that ring a bell to  
10 you?

11 A. Yes, sir, that's why I offered -- because we don't  
12 know -- honestly, we don't know the budget of the hospital.  
13 So we offered two options.

14 Q. Okay?

15 A. Which is the Vitek 60 system is an old model and  
16 there is another one, the Vitek 2 which is the latest model.

17 Q. Vitek 2?

18 A. Compact system.

19 Q. Oh, the Compact. So you offered two models to give  
20 the hospital a choice based on their budget?

21 A. Yes, sir.

22 Q. Okay. And the Vitek 60 is the old model and so that  
23 was cheaper than the Vitek 2?

24 A. Yes, sir.

25 Q. And the test kits were the same for these or

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1 different?

2 A. The test kits are the same.

3 Q. Did you seek any kind of clarification of these  
4 specifications from anyone at the hospital?

5 A. No. Clarification, sir, on what?

6 Q. On what they mean, what specific test?

7 A. Oh, there is amendment.

8 Q. -- the budget.

9 A. Amendment to clarify.

10 Q. Yes, which one? There's three amendments.

11 A. The Amendment No. 3, reagent supply cost will be  
12 separate. There is an amendment also to move the bid opening  
13 date.

14 Q. Yes?

15 A. Yeah.

16 Q. Okay. But did you ask anyone as to the test, the  
17 3,000 -- what were those 3,000 tests to specifically consist  
18 of?

19 A. No.

20 Q. No. Okay. Are you familiar with the bid  
21 specification sheet?

22 A. Yes, sir.

23 Q. It says specs. You see the middle box refers to  
24 specs and comments. Did you provide any comments as to the  
25 specs?

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1 A. Yes, we provided.

2 Q. Please read out what you --

3 A. We noted here, please see attached summary of the bid  
4 offer.

5 Q. Okay. Are you talking about this page, Page 104?

6 A. Yes, sir.

7 Q. Okay. And this one, correct me if I'm wrong, you  
8 have option number two and then you also have the preceding  
9 page is option number one; correct?

10 A. Yes.

11 Q. This is the summary that you're talking about?

12 Now, the first option was Vitek 60 system, the second  
13 option was for Vitek 2 Compact 60 configuration?

14 A. Yes, sir.

15 Q. And this is -- the Vitek 2 is the more modern  
16 version?

17 A. Yes.

18 Q. But your description of your supplies, you have  
19 supplies for 3,000 tests per annum, 150 kits for ID, GNI/ GPI  
20 on both options; correct?

21 A. Yes, sir.

22 Q. And that was all the description. And then 150 kits  
23 per sensitivity, GNS/GPS?

24 A. Yes, sir.

25 Q. It's just a generic description of what you were

1 going to be furnishing?

2 A. Yes, sir.

3 Q. And why did you give a generic description of what  
4 you were furnishing?

5 A. We asked our vendor to give us what are the number of  
6 kits that we can provide the hospital for the specs written in  
7 the bid for the 3,000 tests per annum.

8 Q. That's just for tests? You didn't ask for specific  
9 tests from the hospital?

10 A. No, sir.

11 Q. You never did?

12 A. (Witness shook head.)

13 Q. And the hospital never gave you -- in fairness to  
14 you, the hospital never said, here's the 3,000 specific tests  
15 we want you to furnish us?

16 A. Yes.

17 Q. Not until your August 10th letter that we discussed  
18 earlier?

19 A. Yes.

20 Q. Now, these systems also come up -- also come with  
21 start-up kits; is that correct?

22 A. Yes, sir.

23 Q. And those are tests as well; correct?

24 A. Yes, sir.

25 Q. Do these -- did you add the start-up kit tests to the

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1 based on the specs given and the award is not fair due to the  
2 fact that the other vendor -- Can I say the name?

3 Q. Yes.

4 A. Which is Med Pharm, is nonresponsive by not offering  
5 the reagents or the kits for the 3,000 tests per annum.

6 Q. But if your offer did not specify which test you're  
7 offering, are you not -- is not your bid also nonresponsive to  
8 what the hospital needs?

9 MR. SISON: Well I'm going to object to that as  
10 it calls for legal conclusion, speculation.

11 MR. UNPINGCO: Objection noted but I think as a  
12 matter of common sense, I would like to find out her opinion  
13 whether or not she felt that it was meeting the  
14 specifications.

15 THE WITNESS: Should I answer?

16 MR. SISON: Answer, as you can.

17 THE WITNESS: Okay. Well in my understanding, to  
18 off a general terms of the specific kits, like the GPS and  
19 GNS, the lab tech or the supervisor understand that kind of  
20 general terms for that and they will provide whichever the  
21 vendor offered this particular award and they will provide  
22 which test they will use.

23 Q. (By Mr. Unpingco) So there's still a missing piece  
24 of information?

25 A. Yes, and in my opinion, this bid should compose on

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1 that from the hospital. They should notify which specific  
2 test they want.

3 Q. So their specs were ambiguous, because they -- it was  
4 not complete?

5 A. I don't think it's ambiguous, because they said to  
6 provide tests or supplies, then we ask our vendor to provide  
7 the test or the kits for that 3,000 test per annum because  
8 they're our expert on that particular area, on that laboratory  
9 equipment and they can provide how many kits on the 3,000  
10 tests per annum.

11 Q. But it was not the vendor that was purchasing the  
12 kits. The problem I guess I'm struggling with here is that  
13 you satisfied the requirement for 3,000 tests, that I can see  
14 you doing, you're turning to your vendor, but the other part  
15 is of those 3,000, are those the correct 3,000 that the  
16 hospital is seeking, and what I'm asking you is that the  
17 hospital, and I think you've answered that already so forgive  
18 me if I'm repeating it, but the hospital never specified what  
19 particular test those 3,000 were to consist of.

20 They never said a thousand tests of this particular  
21 type. Until the August 10th letter, that's when you first  
22 received an idea of what test, which specific tests the  
23 hospital was after. Is that fair to say?

24 A. Yes, sir, that's after.

25 Q. After the fact, after the bid opening. Right?

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1 A. Yes.

2 Q. That's when they give you the August 10th letter and  
3 said, here, this is the test we want, give us a price. Right?

4 A. Yes.

5 Q. So the hospital, really, they did not give you all  
6 the information you needed so that then armed with that  
7 information, you could have then gone to your vendor and said  
8 the 3,000 tests consist of, these are the specific categories?

9 A. Yes, it's not given.

10 Q. It's not given, yes. The only thing given for sure  
11 was the 3,000 tests?

12 A. (Witness nodded head.)

13 Q. Okay. And you have to say yes or no, ma'am, because

14 --

15 A. Yes. Sorry.

16 Q. And you were the person that was taking the lead on  
17 this particular procurement as far as putting the bid package  
18 together?

19 A. Yes, sir.

20 Q. Because Rey Vega was depending on you and John Ilao  
21 was depending on Rey, is that the way --

22 A. Because I was the one who prepared the bid package.

23 Q. So you're the most knowledgeable of the three of you;  
24 is that fair to say?

25 A. Yes, sir, I would say that.



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1 MR. UNPINGCO: Thank you. I don't have any more  
2 questions.

3 CROSS-EXAMINATION

4 BY MR. SISON:

5 Q. I just have a couple of clarification questions. In  
6 reference to the August 10, 2007, letter, is it your -- what  
7 is your understanding with respect to whether these test cards  
8 was all that they were asking for or -- what was your  
9 understanding with respect to these test cards? Was it -- are  
10 these the only test cards they needed? What's your  
11 understanding from your reading of this August 10th letter?

12 A. Based on this letter they provided, this is the test  
13 card they need under the GPS, GNS and streptococcus pneumonia  
14 --

15 Q. So are you saying they don't need any of these other  
16 cards that will test these other reagents, they don't need any  
17 of these other cards based on your reading of these?

18 A. I'm sorry, they don't need this --

19 Q. You just stated that this is what they need. Are you  
20 saying they don't need any other test cards for their use in  
21 the hospital? Do you know?

22 A. That I cannot answer. I don't know what else they  
23 need.

24 Q. Do you know -- do they ever use other test cards  
25 other than these on the machine that they currently have?