STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

I. RELEVANT BACKGROUND

A. GPA SOLICITS BIDS FOR INVITATION FOR BID GPA-064-11 , 55' BUCKET TRUCKS

On June 14, 2011, ("GPA") issued Invitation for Bid, GPA-064-011, 55' Bucket Trucks. Procurement Record, Tab"18". Five companies submitted bids in response to the IFB, Far East Equipment Company, Mid Pac Far East, Morrico Equipment, Triple J, and Pacific Waste Systems. Tab "10". Prior to submission of the bid responses, the five bidders had an opportunity to submit questions regarding the IFB. GPA issued amendments I to VI in response to these questions, and other amendments to clarify the IFB. Procurement Record, Tabs "12-17".

Each bidder acknowledged the different amendments, and subsequently submitted a bid which was opened on July 12, 2011. The Abstract of Bids identified the five bidders, and the bids submitted by each. Procurement Record, Tab "10". The Notice of Intent of Possible Award to Far East Equipment Company was sent to all bidders, and no protest was made in response to the award. Subsequently, the lowest bidder's purchase order was terminated by GPA for failure to deliver the two bucket trucks.

GPA then contacted the second lowest bidder, Mid Pac Far East, and asked the bidder to respond to GPA whether it would honor the price submitted in its original proposal. Tab "11". Mid Pac responded with a letter and revised proposal for two bucket

trucks. Tabs "8-9". In its letter and proposal dated January 31, 2013, Mid Pac Far East requested to change the truck manufacturer and body manufacturer and other minor changes such as the cab color to white. The bid evaluation committee met on February 11, 2013, and accepted the minor deviations proposed by Mid Pac Far East. Tab "6". After approval by the CCU of the change to the second lowest responsive bidder, Mid Pac Far East, a purchase order was issued on February 13, 2013, to Mid Pac Far East for two bucket trucks at the original price proposed in the bid abstract of $237,750.00 per bucket truck which provided for delivery by July 2, 2013. Tab "3". The bucket trucks were delivered in a timely fashion, accepted by GPA, licensed by the Department of Revenue and Taxations, and put into service by GPA.

Morrico's attorney filed a protest with GPA on August 20, 2013 alleging the bid submittals of Mid Pac Far East did not comply with the solicitation, and further that GPA "not proceed further with the procurement or award of a procurement contract." Tab "2". Apparently, Morrico's attorney was unaware that not only had the award been made prior to the protest, but that the bucket trucks had already been delivered and accepted by GPA prior to any protest. GPA denied the protest submitted by Morrico's attorney on the grounds that Mid Pac Far East's submission met the bid specifications, and further that the protest filed by Morrico was untimely pursuant to 5 GCA §5425, as it was not filed within 14 days after such aggrieved person knows or should know of the facts giving rise thereto. Tab "1". In its filing with the OPA, Morrico now conveniently indicates it was unaware of the award to Mid Pac Far East until August 8, 2013.

II. JURISDICTION

A. THE OFFICE OF THE PUBLIC AUDITOR (OPA) HAS NO JURISDICTION OVER THE CLAIMS RAISED BY MORRICO, AS ITS PROTEST REGARDING IFB-064-011 WAS NOT FILED IN A TIMELY MANNER

The Notice of Appeal filed by Morrico on October 30, 2013, indicates that a decision being appealed was made on October 15, 2013. 5 GCA §5425(a) provides that any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto. Clearly the facts indicate that the second award was made to Mid Pac Far East, delivery was made to GPA, accepted by GPA months prior to this appeal. More than fourteen (14) days has elapsed and therefore the protest filed by Morrico's attorney was not timely.

II. DISCUSSION

A. THE MID PAC FAR EAST BID WAS RESPONSIVE, AND THE BID WAS PROPERLY ACCEPTED BY GPA AFTER THE DEFAULT OF THE ORIGINAL BIDDER, FAR EAST EQUIPMENT COMPANY.

Procurement law requires that GPA award to the lowest responsible and **responsive** bidders. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bid. 5 GCA§5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2). Further, any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive. 2 GAR, Div. 4, Chap. 3, §3109(n)(3)(c).

After the default due to non-delivery by the original bidder, GPA properly

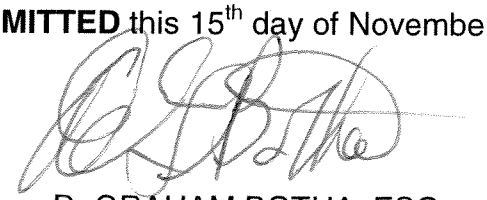
approached the next lowest bidder, Mid Pac Far East, and asked them whether they would honor the price set forth in their original bid submission. Mid Pac Far East requested minor deviations, agreed to by GPA, and delivered the two bucket trucks in a timely manner. The bucket trucks were delivered in a timely fashion, accepted by GPA, licensed by the Department of Revenue and Taxations, and put into service by GPA. There is no merit to Morrico's allegation that these bucket trucks were not responsive to the original bid specifications.

To the extent not previously discussed or covered above, GPA denies each and every allegation made by Morrico in its Notice of Appeal filed with the OPA on October 30, 2013.

CONCLUSION

GPA requests that the appeal of Morrico be dismissed, on the grounds that the appeal was not filed in a timely manner, and that the award to the second lowest responsive bidder, Mid Pac Far East, was appropriately made as its bid was responsive to the specifications contained in IFB-064-011. GPA further requests that the Public Auditor award all legal and equitable remedies that GPA may be entitled to as a result, to include attorney's fees and costs incurred by GPA.

RESPECTFULLY SUBMITTED this 15th day of November, 2013, by:



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