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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 12/18/13
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FILE NO OPA-PA: 13-015

10 **OFFICE OF THE PUBLIC AUDITOR**
11 **PROCUREMENT APPEALS**

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13 IN THE APPEAL OF) **DOCKET NO. OPA-PA-13-015**
14)
15 MORRICO EQUIPMENT, LLC) **APPELLEE'S REMEDIES BRIEF**
16)
17 Appellant.)
18 _____)
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21 **COMES NOW**, the GUAM POWER AUTHORITY, by and through its counsel of
22
23 record, D. GRAHAM BOTHA, ESQ., and submits its Remedies Brief as follows.

24 **ARGUMENT**

25 Guam Power Authority (GPA) submits that it properly awarded the bucket trucks to Mid
26 Pac Far East, the second lowest responsive bidder upon the default of the lowest responsive bidder,
27 Far East Equipment, when it failed to deliver in a timely manner in accordance with the
28 specifications in GPA-064-11, 55' bucket trucks. GPA determined that the proposal submitted by
29 Mid Pac Far East of a 2013 International chassis with an Altec AM55 boom satisfied in all
30 material aspects the specifications set forth in the Invitation for Bids in GPA-064-11. GPA further
31 determined that the minor deviations requested by Mid Pac, including the change of color from
32 John Deere yellow to white, were not material deviations, and recommended that GPA re-award to
33 Mid Pac Far East, after the default in delivery of Far East Equipment. Morrico reluctantly
34 conceded on cross examination, that Morrico's bid had the same deviation from the specifications
35 as that of Mid Pac, regarding the X-frame stabilizer instead of the requested A-frame stabilizer.

1 A responsive bidder is a person who submitted a bid which conforms in all material
2 respects to the Invitation for Bids. 5 GCA §5102(g), 2 GAR Div. 4, §3109(n)(2). Minor
3 informalities are matters of form, rather than substance evident from the bid document, or
4 insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is,
5 the effect on price, quantity, quality, delivery or contractual conditions is negligible. 2 GAR Div.
6 4, §3109(m)(4).

7 The two 55' bucket trucks supplied by Mid Pac Far East were in fact delivered to GPA in a
8 timely manner, met the specifications required by GPA, have been accepted by GPA, paid in full
9 by GPA, and are currently being used by GPA. There is no question regarding a stay of
10 procurement as in other recent OPA cases, and there are no further vehicles required to be
11 delivered under the IFB. There is no evidence that the contractor, Mid Pac Far East, has acted in
12 bad faith in procuring and delivering the two bucket trucks requested by GPA. The procurement
13 of the bucket trucks from Mid Pac was in the best interests of GPA and has resulted in the delivery
14 of two fully functional bucket trucks meeting GPA specifications.


15 GPA submits that appellant Morrigo Equipment LLC is not entitled to any remedies and its
16 appeal should be dismissed, based on the merits of the case. However, should the Office of Public
17 Accountability (OPA) find in favor of Morrigo on the merits, the OPA should ratify the contract
18 between GPA and Mid Pac as ratifying the contract is in the government's best interests. In a
19 post-award situation in which the contractor has not committed bad faith, the contract may be
20 ratified and affirmed provided that doing so is in the best interest of the Territory; or the contract
21 may be terminated and the person awarded the contract shall be compensated for the actual
22 expenses reasonably incurrent under the contract, plus a reasonable profit, prior to the termination.
23 5 GCA §5452(a). In this case, the contract has been completed, and Mid Pac has been fully paid

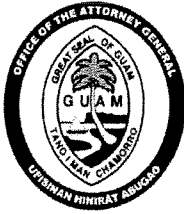
1 by GPA for the delivery of two bucket trucks. Morrigo has presented no evidence at the hearing of
2 any bad faith on the part of Mid Pac.

3 This case is distinguishable from recent OPA cases, In the Appeal of G4S Security Systems,
4 OPA-PA-13-013, in that there is no allegation of violation of the automatic stay by award of a
5 contract after a protest was filed. While there may have been minor technical violations of the
6 procurement regulations, there was certainly no major violation such as alleged in the G4S case.
7 This case does have some similarities to a recently decided OPA case of In the Appeal of Triple J
8 Enterprises, Inc., OPA-PA-13-008. In that case, the same appellant, Morrigo Equipment, delivered
9 school busses to DOE, and the busses received by DOE did not meet some of the specifications
10 listed in IFB-GSA-0116-12. The specifications which Morrigo failed to meet were major
11 deviations from the specifications, including the lack of an emergency door and other deviations.
12 These major deviations from the specifications resulted in no penalties to Morrigo, nor the
13 termination of the contract. The resolution to this case resulted in the OPA agreeing to a dismissal
14 of the appeal. A copy of the Settlement Agreement in OPA-PA-13-008 is attached hereto as
15 Exhibit "A".

16 GPA respectfully requests that the OPA find that the appellant Morrigo is not entitled to any
17 remedies, and to dismiss the appeal with prejudice.

18 **RESPECTFULLY SUBMITTED** this 18th day of December, 2013.

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 FILE NO OPA-PA: 13-008

Attorneys for the General Services Agency and Department of Public Works

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEAL**

IN THE APPEAL OF

) DOCKET NO. OPA-PA-13-008
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TRIPLE J. ENTERPRISES, INC.

) **SETTLEMENT AGREEMENT**
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Appellant.

Comes now Appellant Triple J Enterprises, Inc and Respondents General Services Agency (GSA) and the Department of Public Works (DPW), who stipulate and agree to resolve the above referenced appeal and to dismiss this action as follows:

1. The parties acknowledge and admit that the specifications in Information for Bid (IFB), IFB No. GSA-0116-12 (School Bus Bid) were flawed.
2. The Government acknowledges that Appellant is correct that the Buses received by the Government did not meet some of the specifications listed in IFB No.

Exhibit "A"

GSA-0116-12 and that the Appellant's bid submission was closer to the specifications than the buses received.

3. The Parties agree that each shall bear their respective fees and costs.
4. The Parties agree to vacate all dates on the scheduling order.
5. The Parties agree that this is a full and final settlement of OPA-PA-13-008.
6. **Independent Advice of Counsel.** Each party represents and declares that it has or could have received independent advice from its respective attorneys with respect to the advisability of making the settlement provided for herein and with respect to the advisability of executing this Agreement. Each party further represents and declares that it has not relied upon any statement or representation by the other party or of any of its partners, agents, employees, or attorneys in executing this Agreement or in making the settlement provided for herein, except as expressly provided for herein.
7. **Voluntary Agreement.** Each party represents and declares that it has carefully read this Agreement, that it knows the contents of this agreement, and that it has signed the same freely and voluntarily. By entering into this agreement the Respondents do not admit to any legal liability other than as may be created under this agreement.

NOW THEREFORE, the parties agree and request the Office of the Public Accountability to dismiss with Prejudice the above captioned appeal.

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SO STIPULATED:

OFFICE OF THE ATTORNEY GENERAL
Leonardo M. Rapadas, Attorney General

TRIPLE J ENTERPRISES, INC.



FRED NISHIHIRA
Assistant Attorney General



JEFF JONES
President, Triple J Enterprises, Inc.


Dated: 9/10/13

Dated: 9/10/13



CLAUDIA S. ACFALLE
CPO, General Services Agency

Dated: 9/11/2013



CARL DOMINGUEZ
Director, Department of Public Works

Dated: 9/10/13

SO ORDERED: Sept 13, 2013.

OFFICE OF PUBLIC ACCOUNTABILITY
The Public Auditor of Guam

By: 

DORIS FLORES BROOKS