

TABLE OF CONTENTS

1. Protest Copy
2. Protest Response
3. Other Correspondence

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November 21, 2014

PROCUREMENT PROTEST

VIA FACSIMILE TRANSMISSION
and HAND DELIVERY

Claudia S. Acfalle
Chief Procurement Officer
GENERAL SERVICES AGENCY
148 Route 1 Marine Corps Drive
Piti, Guam 96915
Tel: 475-1707 / Fax: 472-4217

RE: GSA065-14 – School Bus (60 Passenger)

Dear Ms. Acfalle,

This office represents Morrico Equipment, LLC (“Morrico”), 197 Ypao Road, Tamuning, Guam 96913, with respect to GSA065-14 (“IFB”), a procurement solicitation for 60 passenger school buses.

Morrico hereby files its protest with respect to the above-referenced procurement for which the GSA held a bid opening on August 12, 2014.

The reasons for this protest are as follows:

The GSA advised Morrico on September 9, 2014, that its bid was rejected for non-compliance with the specifications requiring the use of rivets on all exterior body parts. The GSA further advised that it had cancelled the solicitation and that it would be putting it out for a re-bid. That statement has turned out to be untrue and has misled Morrico to its detriment.

At some point, that GSA determined that it would rescind its prior determination to cancel and re-bid the procurement and to, instead, award a contract to Triple J for the subject buses. The GSA apparently made this determination despite the fact that it had rejected Triple

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Claudia S. Acfalle
Chief Procurement Officer
GENERAL SERVICES AGENCY
November 21, 2014

J's bid at bid opening because it was non-responsive and because the mandatory provisions of the IFB required GSA to reject the Triple J bid.

Morrigo has a due process right to notice of the government's actions which affect Morrigo's interests in this procurement, and an opportunity to be heard. The GSA did not give notice to Morrigo that it was rescinding its decision to cancel and re-bid the procurement and that it had instead determined to award a contract to Triple J. Further, the GSA did not allow Morrigo the opportunity to be heard on that matter and has thereby violated Morrigo's basic rights to due process. The process followed by the GSA in this matter is so fundamentally unfair that Morrigo has been denied an opportunity to compete equally in this IFB.

If the GSA is now rescinding its determination to cancel and re-bid the procurement, previously made on September 9, 2014, Morrigo is entitled to be placed back into the position it would have been in on September 9, 2014, with all remedies under the procurement code available to it. For example the Superior Court of Guam cited to the case of *Sendra Corporation v. Magaw*, 111 F.3d 162,167 (D.C.Cir. 1997), for the proposition that "[i]f for any reason the agency reopens a matter and, after reconsideration, issues a new and final order, that order is reviewable on its merits, even though the agency merely reaffirms its original decision The new order is, in other words, final agency action and as such, a new right of action accrues and starts the running of a new limitations period for judicial review." See, *Pacific Security Alarm, Inc., v. Department of Public Works*, Civil Case No. CV0591-05 (Decision and Order, July 11, 2006, p.3). The Superior Court in *Pacific Security Alarm*, also cited to *Gonzalez v. Sullivan*, 914 F.2d 1197, 1203 (9th Cir. 1990), for the proposition that "[o]ne of the fundamental requirements of procedural due process is that a notice must be reasonably calculated to afford parties their right to present objections." See, *Id.*, p. 5. The GSA did not notify Morrigo of its determination to rescind its cancellation of the IFB or its determination to award the contract to Triple J despite the fact that it had previously rejected the Triple J bid as being non-responsive at bid opening.

The GSA previously rejected the Triple J bid as non-responsive for failure to submit descriptive literature, to include mandatory drawings/seating plans. Item 19 of the general terms and conditions governing descriptive literature required that the GSA reject the Triple J bid as non-responsive. The seating plan was necessary so that procurement personnel could verify that the bus being offered met the requirements of the specifications, all as recognized by the procurement personnel assembled to evaluate Triple J's bid. See, In the Matter of Appeal of Triple J Enterprises, Inc., OPA-PA-14-009, Exhibit N.

In addition, Triple J did not submit any other specifications for the buses that it was offering as required by item 19 governing descriptive literature. While Triple J submitted a Bluebird brochure, Triple J did not mark it up to illustrate which optional components discussed in that brochure that Triple J was actually offering the GSA. Attached hereto as **Exhibit A** are the specifications submitted by Morrigo with its bid. From these specifications, the GSA and

Claudia S. Acfalle
Chief Procurement Officer
GENERAL SERVICES AGENCY
November 21, 2014

DPW can verify each of the component parts of the buses that Morrico is offering. Triple J did not provide any similar specifications to the GSA or DPW that are equivalent to those provided by Morrico and attached hereto. Accordingly, the GSA and DPW cannot verify the component parts being offered by Triple J, to include the engine, transmission, brakes and numerous other critical bus components; all of which are shown by the Morrico specifications submitted with its bid.

The GSA and DPW cannot know, for example, whether Triple J is offering a Cummins or Ford engine. However, if it is the Cummins engine, Morrico is informed and believes that Triple J is not an authorized Cummins engine dealer on Guam and is not permitted to perform warranty claim service on a Cummins engine. Item 16(g) of the general terms and conditions of the IFB required that the GSA consider, in its determination of a lowest responsible bidder, “[t]he ability of the bidder to provide future maintenance and services for the subject of the award.” Triple J has not provided any documentation that it is certified to provide warranty maintenance and services on a Cummins engine. Triple J did not produce with its bid, the actual production specification document from the bus manufacturer printed out in accordance with the bid specifications. Nor did it submit any engine specification document, a transmission specification document or even documentation that it is an authorized Bluebird bus dealer for Guam.

Despite these mandatory requirements, the GSA has now apparently decided that none of these requirements matter. Further, the GSA has now apparently allowed Triple J to modify its bid after bid opening. But the GSA’s IFB expressly provided with respect to late modifications that “[a]ny withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late” Additionally, the IFB provided that “[n]o late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of territorial personnel directly serving the procurement activity.” 5 GCA § 5211(f) provides that “all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Procurement Officer” Morrico is unaware of any determination made by the Chief Procurement Officer in compliance with the foregoing law to allow Triple J to modify its bid or to correct any purported mistake in its bid submission. Nor is Morrico aware of any determination by the GSA that the necessity of Triple J to correct or modify its bid was caused by an act or omission of territorial procurement personnel.

Had the GSA not cancelled the IFB and advised Morrico that it was going to re-bid it, Morrico would have protested the rejection of its bid based on the exterior rivet specification. Instead, it sought to work with the GSA and the DPW to develop proper specifications by requesting that the GSA and DPW work directly with all interested manufacturers in the development of specifications. *See, Exhibit B.* The exterior rivet specification is a restrictive

Claudia S. Acfalle
Chief Procurement Officer
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November 21, 2014

specification that has no material effect on the school buses being acquired by the GSA. Morrico's manufacturer, Thomas Built Buses ("TBB"), uses screws in certain exterior areas in order to make replacement or repair of those exterior components easier. Further, there is no difference in corrosive resistance between rivets and the screws used by TBB.

However, if the GSA refuses to acknowledge that the use of screws in the assembly of certain exterior parts having the same anti-corrosive properties of the specified rivets, then the Triple J bid of a Bluebird bus must be rejected for the same reason. Bluebird produced a video that can be found on YouTube at: (<http://www.youtube.com/watch?v=-Wx11hn7d58>), which shows the manufacturing process for Bluebird school buses. At 2:34 of the video, the manufacturing process shows the installation of exterior rub rails with screws. Right after that, the video shows the installation of interior ceiling panels with the use of a rivet gun. Accordingly, the Bluebird bus offered by Triple J does not appear to meet the exterior rivet specification which the GSA utilized as a basis for rejecting the Morrico bid. If the Morrico bid had to be rejected for not meeting the exterior rivet specification, then the Triple J bid must be rejected on that same basis.

In addition to the foregoing, Morrico offered a 180 day delivery time against a 240 day delivery time offered by Triple J. *See*, **Exhibit C**. Delivery time can be considered by the GSA and measured against a cost difference between vendors in determining who the lowest responsive and responsible bidder is. *See*, 5 G.C.A. § 5010. Morrico's 180 day delivery time is at least 10% shorter than the Triple J's 240 day delivery time. In addition, Morrico's bid price does not exceed 105% of the Triple J bid price. Accordingly, by all measures, this contract should have been awarded to Morrico.

Morrigo hereby protests any award of a contract to Triple J because its bid was non-responsive at bid opening for failure to provide the required literature, to include specifications equivalent to those submitted by Morrico and attached as **Exhibit A** hereto, as well as its failure to submit the mandatory drawings/seating plans. In addition, Morrico protests the GSA's rejection of its bid for failure to meet the exterior rivet specification. That specification is unduly restrictive and anti-competitive. Triple J's bid of a Bluebird bus does not meet this specification either. Morrico requests that the GSA determine that the use of screws in certain exterior bus components is equal to the use of rivets and that the GSA award the contract to Morrico for all of the reasons explained above.

Please be advised that pursuant to the Guam Procurement Law you are not to proceed further with the procurement or award of a procurement contract prior to resolution of this bid protest. *See*, 5 G.C.A. § 5425.

Claudia S. Acfalle
Chief Procurement Officer
GENERAL SERVICES AGENCY
November 21, 2014

I look forward to your resolution of this protest expeditiously.

Sincerely,

DOOLEY ROBERTS & FOWLER LLP



Kevin J. Fowler



Sales, Rental, Parts and Service



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SPARE PARTS: Phone 1-671-646-7914 Fax 1-671-646-7900
WEB: www.morricequipment.com



IFB No. GSA-065-14

School Bus (60 Passenger)

2015 Thomas Built C2, 60 Passenger School Bus - Specifications.

Dated :16 July 2015

Model Profile: Saf-T-Liner C2 281TS

Table with 2 columns: Product Type, Year, Chassis Model, Chassis MFG, GVWR, Passenger Capacity, Headroom, Wheelbase, Brake Type, Engine Type, Fuel Type, Fuel Tank Capacity, Transmission Type, Axle, Front, Axle, Rear, Tires, Front, Tires, Rear, Suspension Front, Suspension Rear. Values include School Transportation, 2015, B2 106, FLNER, 29,000-lb, 60, 78, 238, AIR, CUMMINS ISB200 DIESEL, 6 Cyl, 200 HP, 2600 RPM, DIESEL, 60, Allison 2500, DA-F-10-3 10,000# FF1 71.5 KPI/3.74 DROP SINGLE FRONT AXLE, 10000-lb Capacity, DA-RS-19-2 19,000# R-SRS SINGLE REAR AXLE, 19000-lb Capacity, FRONT GOODYEAR G661 HSA 11R22.5 14 PLY TIRES, REAR GOODYEAR G661 HSA 11R22.5 14 PLY TIRES, 10,000 LB. TAPERLEAF FRONT SUSPENSION, COMFORT TRAC 19K 52 INCH RR SPRING SUSPENSION.

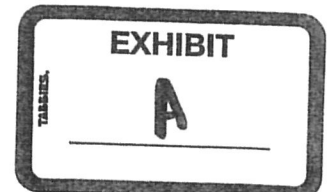
Includes the Following Equipment:

BODY

ACCESSORIES

1 [D131100001] LOCKS-KEYED ALIKE #CH545

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Page 2.

CERTIFICATION/SAFETY

- 1 [D102200000] REFLECTTAPE-RR END YEL 1"
4 [D102500000] REFLECTTAPE-P/O WDO YEL
1 [D102901000] REFLECTIVE TAPE-EMERGENCY DOOR REAR YELLOW
1 [D103400281] REFLECTTAPE-SIDE 2" @ FLR YEL
1 [D103900000] FIRE EXTINGUISHER-5 3A-40BC
1 [D107000000] REFLECTORS-AMBER(2) MID BDY 3"
1 [D107100000] REFLECTORS-RED (4) RR/RR SI 3"
1 [D107303002] HATCH-ROOF ESCAPE MODEL 1900 ENGLISH (2)
1 [D108700002] HANDLES-W/S SERVICE, BLACK
1 [D110024SCO] KIT,FIRST AID 24 UNIT S.C.
1 [D110100000] KIT - BODY FLUID CLEAN-UP NATIONAL STANDARDS
1 [D116100008] LOC-VEST,FLR.PLT.LEFT 5LB F.E. & FRICTION BRACKET
1 [D122400000] TRIANGLES-REFL 3 W/BOX
1 [D129400000] LOC-O/H STOR TRIANGLE FLARE
1 [D500000004] DUOSTYLE, N-HTD, EXTND RS BKT
1 [D500300000] MIRROR-SYSTEM B EXTERIOR CROSSVIEW BLACK BRACKET
1 [D500601015] SIGN-STOP, AIR FRT #2980C
1 [D602200000] MIRROR-INTERIOR 6"X30" WITH RUBBER EDGE
1 [FL-99C-013] 2013 EPA/CARB EMISSION CERTIFICATION

DOORS

- 1 [D200301005] STEP-RS ALUM.ENT.DR 8.75"RISER
1 [D300800000] LATCH-DOOR INTERIOR STORAGE OVER WINDSHIELD
1 [D302000000] VANDALOCK-REAR DOOR W/BOLT
1 [D302305005] DOOR-ENT AG2 TINT TEMP LOCK
1 [D302404000] POWER SYSTEM-AG2 AIR ENTRANCE DOOR
1 [D303911000] VANDALOCK-ALUM.ENT.DR.CYLINDER W/KEY
1 [D603000000] PAD-DR HEADER, RR EMER 36"W
1 [D608501003] TREAD-STEP ALUMINUM ENTRANCE DOOR BLACK KORSEAL W/PEB NOSING
1 [D610339002] RAIL-ASSIST FRT ENT DR 39"W

Page 2 of 9

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Dated :16 July 2015

Page 3.

ELECTRICAL - BODY

- 1 [D105400001] FAN-CIRC MID W/S HDR BLACK
- 1 [D105600000] FAN-CIRC DRV'S WDO HDR BLACK
- 1 [D106600003] HORN-SPEAKER LS COWL LEG
- 1 [D106900003] RADIO-AM/FM W/CD & PAGE
- 1 [D301100001] ELEC-PWR CELL PHONE OUTLET LS
- 1 [D303104002] OPER-DOOR AIR ENT.W/ BAT.2 POS.
- 1 [D400200000] MONITOR-LAMPS WARNING/STOP/TAIL/TURN
- 1 [D402400003] OPERATION-STEPWELL LAMPS WITH IGNITION/DOME SWITCH(S)
- 1 [D402500000] LAMPS-STEPWELL WITHOUT HOOD (1)
- 1 [D402801002] LPS-STP/TAIL/DIR AMBER/REV LED
- 1 [D405900001] LPS-LIC PLATE ILLUMINATION LED
- 1 [D406212008] LPS-WARNING LED STROBE (8)
- 1 [D406601026] OPER-LPS WARNING (8) PKG 28
- 1 [D406700000] OPERATION-LAMPS REVERSE WITH REAR EMERGENCY DOOR OPEN
- 1 [D406900003] LAMPS-ID AMBER/RED LED
- 1 [D407002000] LPS-MKR ROOF F/R LED W/SHLD
- 1 [D407102000] LPS-MKR ROOF MID LED W/SHLD
- 1 [D408901000] LPS- STOP/TAIL 4" FLS.MT L.E.D.
- 1 [D412200000] LAMPS-PILOT WARNING LIGHTS RED
- 1 [D412300000] LAMPS-PILOT WARNING LIGHTS AMBER
- 1 [D418600002] OPER-PRE-TRIP INSPECTION
- 1 [D419601001] ELEC-SEAT BELT PILOT LAMP
- 1 [D419700001] OPER-SEAT BELT PILOT LAMP
- 1 [D419900000] LAYOUT-ROCKER SWITCH STANDARD
- 1 [D420300000] CIRCUITRY-MULTIPLEX PRESENT
- 1 [D602001281] SPEAKERS-INT. 30 WAT.(6) 281T

Page 3 of 9

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Dated :16 July 2015

Page 4.

EXTERIOR

- 1 [D108800002] FLAPS-MUD, REAR 22.5"W
- 1 [D108900001] FLAPS-MUD, FRONT 16"W X 12"H
- 1 [D109000000] HOOKS-TOW, REAR BOLTED (2)
- 1 [D110500000] STEPS-EXT W/S SERVICE
- 1 [D200200002] FENDER-QUARTER 24" BATTERY BOX DOOR
- 1 [D200600000] BODY ADJUSTMENT-FREIGHTLINER, BTR RS FUEL FILL LOCATION
- 1 [D202800001] FLOOR-NON ADA
- 1 [D309901000] LATCH-STORAGE COMPARTMENT 30/60 LOCK RIGHT SIDE 1ST
- 1 [D502600000] BUMPER-REAR 2 BRACES NO EXHAUST HOLE
- 1 [D503302000] CAP-FRT ROOF VENT W/WARN.LPS.
- 1 [D503402000] CAP-REAR ROOF W/WARN.LPS.
- 1 [D504006281] SHEET-LWR, L MID 20G,21"
- 1 [D504106281] SHEET-LWR,L RR 20G,21"
- 1 [D504206281] SHEET-LWR,R MID 20G,21"
- 1 [D504402008] VISOR-EXT.@ WARN LPS (8)
- 1 [D504500003] DOOR-U/B L BATTERY 24"
- 1 [D507400003] LATCH-BATT DOOR LOCKING
- 1 [D507600000] LATCH-FUEL FILL ACCESS (THUMB)
- 1 [D508200003] RS STORAGE BOX 1 - 30" WIDE
- 1 [D510900000] VENT-STATIC PRESENT
- 1 [D511800000] LATCH-NON-LOCKING DEF ACCESS DOOR
- 1 [D512900000] RAIL-SNOW RAIL PRESENT

INTERIOR

- 1 [D106500000] VISOR-WINDSHIELD SUN 6"X30" TINTED
- 1 [D123000002] DOOR-STORAGE BOX W/O GLASS
- 1 [D300601002] DOOR-ACC SOLID PANEL
- 1 [D309001001] LATCH-DR INT STOR OVR DRVRSHDR
- 1 [D510800001] BTR FUEL FILL RECESS, W/DOOR
- 1 [D601402281] STRIPS-AISLE, GALVALUME 281T
- 1 [D601508281] FLR-BLK VINYL W/13" CTR AISLE 281T
- 1 [D601700281] FLR-PLYWOOD 5/8" 281T
- 1 [D608600000] TRIM-STEPWELL HORIZONTAL WITH DIAMONETTE NOSE
- 1 [D609901002] INSULATION-FRT BULKHEAD W/ACRSY 2"POLY
- 1 [D616800281] SEALANT-PLYWOOD FLOOR EDGES
- 1 [D617000000] SEALING-FLOOR COVERING

Page 4 of 9

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Dated :16 July 2015

Page 5.

MISC

- 1 [A0000CHECK] LOOSE ITEM OPTIONS - CHECKLIST
- 1 [A200100000] PDI IDENTIFIER-DEALER PERFORMED
- 1 [D125200000] MANUAL-DRVR'S/MAINT.ENGLISH
- 1 [F018-002-R] PRICE ADJ-IN COMBINATION W/101-2N2 W/001-310
- 1 [F386-055-5] PRICE ADJUSTMENT - IN COMBINATION WITH 545-605 238"
- 1 [F546-021-C] PRICE ADJUSTMENT-IN COMBINATION WITH 545-605 238" WB
- 1 [FL-141-998] NO COOLANT HEATER - GAS/DIESEL
- 1 [TB-001-310] SAF-T-LINER C2

PAINT/LETTERING

- 1 [D100600000] LABEL-P/O WDO EMER EXIT 2" RED
- 1 [D101502001] LABEL-ENGLISH AG2.AIR.ENT DR
- 1 [D126200000] LETTER - OVERHEAD STORAGE BOX "SAFETY EQUIP"
- 1 [D130200000] DECAL-LOW SULFUR FUEL
- 1 [D132200000] LABEL-RR DR EMERGENCY DOOR DO NOT BLOCK
- 1 [D132600000] DECAL-ENTRANCE DOOR VANDALOCK ENGLISH
- 1 [D134200000] LABEL-RR EMERGENCY DOOR INSTRUCTION
- 1 [D134600000] LABEL-"DEF ONLY"
- 1 [D134901000] LABEL-REGENERATION WARNING 2010/2013 EPA ENGLISH
- 1 [D502513000] PAINT-EXT HNDLE(S) BLACK
- 1 [D503104000] DECAL-FRT CAP "SCHOOL BUS"
- 1 [D503204000] DECAL-REAR CAP "SCHOOL BUS"
- 1 [D505500001] DECAL-"DIESEL"
- 1 [D50601E281] PAINT-EXTERIOR ROOF WHITE 281T
- 1 [D5061SC281] PAINT-EXT WDO AREA SAME AS BODY
- 1 [D506347000] PAINT-EXT GRD RAIL @ WINDOW BLACK
- 1 [D506447000] PAINT-EXT GRD RAIL @ SEAT BLACK
- 1 [D506547000] PAINT-EXT GRD RAIL @ FLOOR BLACK
- 1 [D506647000] PAINT-EXT GRD RAIL @ SKRT BLACK
- 1 [D506747001] PAINT-EXT BUMPER REAR BLACK
- 1 [D506900002] PAINT-EXT.ROOF CAP 3" BLK
- 1 [D510646281] PAINT-SOLID COLOR YELLOW
- 1 [FL-980-878] CAB COLOR A: E180YM050 SCHOOL BUS YELLOW BASF
- 1 [FL-98A-001] GRILLE: SILVER N3388H IMRON 5000

Page 5 of 9

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Page 6.

SEATS

- [A000000130] CG ADJUSTMENT
[B610000097] SEAT BELT - DRIVERS SEAT
[B620000077] BARRIER STORAGE POUCH, LEFT SIDE BEHIND DRIVER
[B640139200] 39" BARR-VERT,WALL MT 45"H RS 2009
[B640239000] 39"8DEG BARR-REV. WALL-MT 45"H 2009
[B640939000] 39" FMVSS HIGH BACK PASS SEAT 2009
[B660019105] SPANISH GRAY UPHOLSTERY-45" HIGH FMVSS SEAT
[B660019121] SPANISH GRAY UPHOLSTERY-45"HIGH RECESSED BARRIER
[D900104000] BACK-NATIONAL DRV'S SEAT
[D900302000] ARMREST NATIONAL DRV'R'S ST. NONE
[D900403000] UPH DR.ST.WOLF BLK NATIONAL
[D900503002] PEDASTAL-DR ST MECH TYPE
[D901039000] KICKPLATE-MOD.PANEL RS 39"
[D901139000] KICKPLATE-MOD.PANEL LS 39"

WARRANTY

- [D1TWAR0011] BDY WTY-1YR UNLIMITED-C2

WINDOWS/GLASS

- [D700000001] GLASS-WINDSHIELD ONE PIECE W/TH TINTED BAND
[D700600L01] FRAME-WDO P/O VERT TEMP TNT LS
[D700600R01] WDO P/O VERT TEMP TNT RS
[D700730002] GLASS-WDO TINT TEMP 30"
[D700740002] GLASS-WDO TINT TEMP 40"
[D701600008] WDO-DRIVER'S TEMP TINT

OTHER

- [D100200002] LOGO-FRT RS & RR
[D109300000] ARM ASSEMBLY-WINDSHIELD WIPER (2)
[D119200003] LOCATION-OVERHEAD STORAGE CENTER 24 F.A.K.
[D123800000] ANTENNA - RADIO SWIVEL BASE
[D400700281] LPS-DOME PASS MIN (6) 281T
[D609100000] PANEL-ACCESSORY MOUNTING SAFTEY EQUIPMENT
[D613600000] HEADLINING TYPE - ALL SMOOTH
[FL-311-005] DAYTIME RUNNING LIGHTS SET @ 85%

Page 6 of 9

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Dated :16 July 2015

Page 7.

CHASSIS

AXLES AND SUSPENSIONS

- 1 [FL-386-055] SPL100 DANA SPICER MAIN DRIVELINE
1 [FL-400-1A5] DA-F-10-3 10,000# FF1 71.5 KPI/3.74 DROP SINGLE FRONT AXLE
1 [FL-409-002] CHICAGO RAWHIDE FRONT OIL SEALS
1 [FL-40T-002] SYNTHETIC 75W-90 FRONT AXLE LUBE
1 [FL-418-030] CONMET IRON FRONT HUBS
1 [FL-41T-002] SYNTHETIC 75W-90 REAR AXLE LUBE
1 [FL-420-1F9] DA-RS-19-2 19,000# R-SRS SINGLE REAR AXLE
1 [FL-421-614] 6.14 REAR AXLE RATIO
1 [FL-440-001] CHICAGO RAWHIDE (SCOT) REAR OIL SEALS
1 [FL-450-030] CONMET IRON REAR HUBS
1 [FL-620-062] 10,000 LB. TAPERLEAF FRONT SUSPENSION
1 [FL-622-1DT] COMFORT TRAC 19K 52 INCH RR SPRING SUSPENSION

BRAKES

- 1 [FL-018-002] AIR BRAKE PACKAGE
1 [FL-402-021] MERITOR 15 X 5 Q+ CAM FRONT BRAKE (ROCKWELL)
1 [FL-404-074] HALDEX LONGSTROKE FRONT BRAKE CHAMBER
1 [FL-405-003] HALDEX AUTOMATIC FRONT SLACK ADJUSTERS
1 [FL-419-023] CONMET CAST IRON FRONT BRAKE DRUMS
1 [FL-423-020] MERITOR 16 1/2 X 7 Q+ CAM REAR BRAKES, DBL-ANCHOR, FAB SHOES
1 [FL-426-074] HALDEX, LONGSTROKE, SINGLE DRIVE AXLE, SPRING-PARK CHAMBERS
1 [FL-428-003] HALDEX AUTOMATIC SLACK ADJUSTERS
1 [FL-460-008] STEEL AIR BRAKE RESERVOIRS INSIDE FRAME RAILS
1 [FL-480-009] BENDIX AD-9 AIR DRYER WITH HEATER
1 [FL-490-100] WABCO 4S/4M ABS WITHOUT TRACTION CONTROL ENHANCEMENT
1 [FL-882-009] 1-VALVE PARKING BRAKE SYSTEM WITH WARNING INDICATOR

Page 7 of 9

ON-SITE DIESEL DELIVERY





ADDRESS: 197 Ypao Road Tamuning GUAM 96913
 OFFICE: Phone 1-671-649-1946
 Fax 1-671-649-1947
 SPARE: Phone 1-671-646-7914
 PARTS: Fax 1-671-646-7900
 WEB: www.morricoequipment.com



IFB No. GSA-065-14

School Bus (60 Passenger)

2015 Thomas Built C2, 60 Passenger School Bus - Specifications.

Dated :16 July 2015

Page 8.

CHASSIS EQUIPMENT

- 1 [D801200000] SHIELD-EXHAUST PIPE
- 1 [FL-122-080] ALLIANCE FUEL FILTER/WATER SEPARATOR
- 1 [FL-132-004] ELECTRIC GRID AIR INTAKE WARMER
- 1 [FL-155-057] DELCO 12V 29MT STARTER WITH INTEGRATED M
- 1 [FL-230-001] 60 GALLON/227 LITER STEEL RECTANGULAR FUEL TANK,BETWEEN RAIL
- 1 [FL-23U-004] 11.5 GALLON DEF TANK
- 1 [FL-452-998] NO TRACTION STABILIZER
- 1 [FL-46A-032] 700 CUBIC INCH MINIMUM AUXILIARY AIR
- 1 [FL-477-042] PETCOCK DRAIN VALVES ON ALL AIR TANKS
- 1 [FL-511-653] SAPRE ACCURIDE 22.5X8.25 10-HUB 5-HAND
- 1 [FL-532-001] FIXED STEERING COLUMN
- 1 [FL-545-805] 6050MM (238") WHEELBASE
- 1 [FL-546-021] 5/16" X 3.00" X 10 1/8" STEEL FRAME (7.94 X 76.5 X 257.2")
- 1 [FL-558-001] FRONT FRAME-MOUNTED TOW HOOKS

ELECTRICAL - CHASSIS

- 1 [FL-124-1AB] LN 12 VOLT 200 AMP 4940 PAD MOUNT ALTERNATOR
- 1 [FL-160-025] DIAGNOSTIC INTERFACE CONNECTOR,9-PIN, S
- 1 [FL-162-002] IGNITION SWITCH CONTROLLED ENGINE STOP
- 1 [FL-27D-004] ALTERNATELY FLASHING HEADLAMP SYSTEM W/BODY BUILDER ENGAGEMENT
- 1 [FL-284-095] 12VOLT POWER SUPPLY LH PANEL
- 1 [FL-285-020] SOLID STATE CIRCUIT PROTECTION, PDMS WIT
- 1 [FL-292-097] (2) ALLIANCE 1131, GROUP 31, 12 VOLT, MF, 1900 CCA BATTERIES
- 1 [FL-31L-083] STOP SIGN PRESENT
- 1 [FL-33A-037] EIGHT LAMP WARNING SYSTEM, LH DASH SWITCH(ES), PACKAGE 26
- 1 [FL-721-001] 97DB BACKUP ALARM
- 1 [FL-763-801] FASTEN SEAT BELT INDICATOR FOR CUSTOMER SUPPLIED SEAT BELT
- 1 [FL-810-027] ELECTRONIC SPEEDOMETER WITH SECONDARY KPH SCALE, NO ODOMETER
- 1 [FL-81Y-001] PRE/POST TRIP SYSTEM TEST
- 1 [FL-864-005] TRANSMISSION OIL TEMPERATURE INDICATOR LIGHT

Page 8 of 9

ON-SITE DIESEL DELIVERY





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 WEB: www.morricequipment.com



IFB No. GSA-065-14

School Bus (60 Passenger)

2015 Thomas Built C2, 60 Passenger School Bus - Specifications.

Dated :16 July 2015

Page 9.

ENGINE AND EQUIPMENT

- 1 [FL-101-2N2] CUM ISB 6.7-200 200HP@2300 RPM,2600 GOV,520 LB/FT @ 1600 RPM
- 1 [FL-103-036] ANTI-FREEZE TO -34F, ETHYLENE GLYCOL PRE-CHARGED SCA COOLANT
- 1 [FL-107-032] CUMMINS 18.7 CFM COMPRESSOR
- 1 [FL-111-001] STANDARD ENGINE OIL
- 1 [FL-128-998] EXHAUST BRAKE NONE
- 1 [FL-148-003] PROGRAMMABLE RPM CONTROL ELEC ENGINES
- 1 [FL-172-016] CONSTANT TORQUE BREEZE CLAMPS ON 1" IN DIA GREATER, SS C
- 1 [FL-273-004] VISCOUS FAN DRIVE
- 1 [FL-79A-065] 65 MPH ROAD SPEED LIMIT

TRANSMISSION AND EQUIPMENT

- 1 [FL-342-1MJ] ALLISON 2500 PTS AUTOMATIC TRANSMISSION
- 1 [FL-343-301] ALLISON VOCATIONAL PACKAGE 354 - FIFTH GEN
- 1 [FL-35T-001] SYNTHETIC 50W TRANSMISSION LUBE (TES-295 COMPLIANT)
- 1 [FL-84U-998] NO MODE SWITCH

WHEELS AND TIRES

- 1 [FL-093-1R6] FRONT GOODYEAR G661 HSA 11R22.5 14 PLY TIRES
- 1 [FL-094-1R6] REAR GOODYEAR G661 HSA 11R22.5 14 PLY TIRES
- 1 [FL-502-653] FRONT ACCURIDE 50408 22.5X8.25 10-HUB PILOT, 5-HAND
- 1 [FL-505-653] REAR ACCURIDE 50408 22.5X8.25 10-HUB PILOT, 5-HAND
- 1 [FL-510-1R6] SPARE GOODYEAR G661 HSA 11R22.5 14 PLY TIRE
- 1 [FL-52M-003] TIRE/WHEEL BALANCING-LEAD FREE WEIGHTS
- 1 [FL-96F-976] ACCURIDE PKBLK21 POWDER BLACK WHEELS (N0001H) - SPARE

OTHER TYPE

GEARS

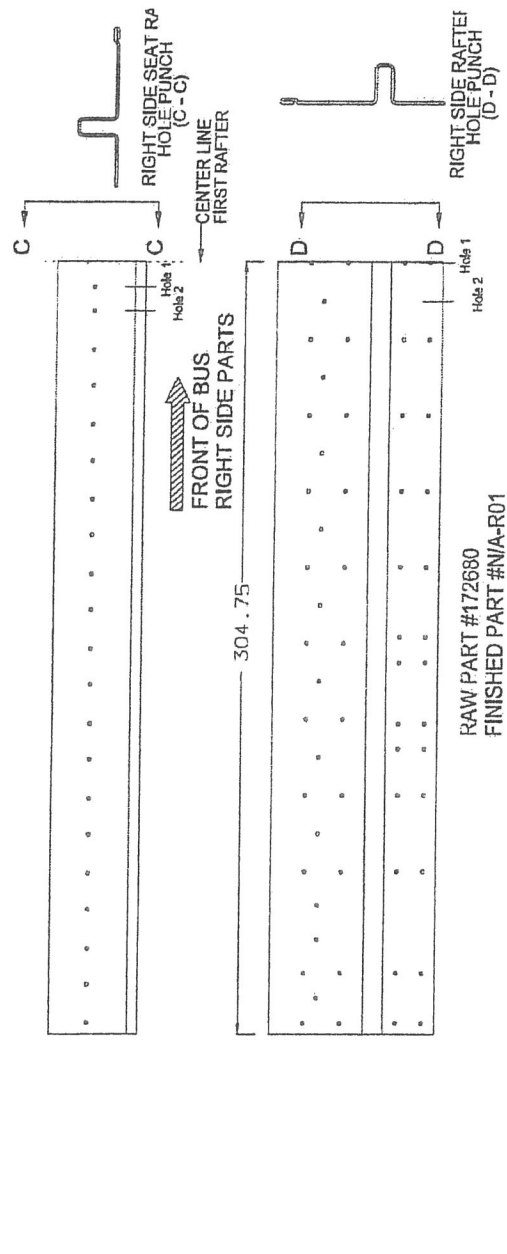
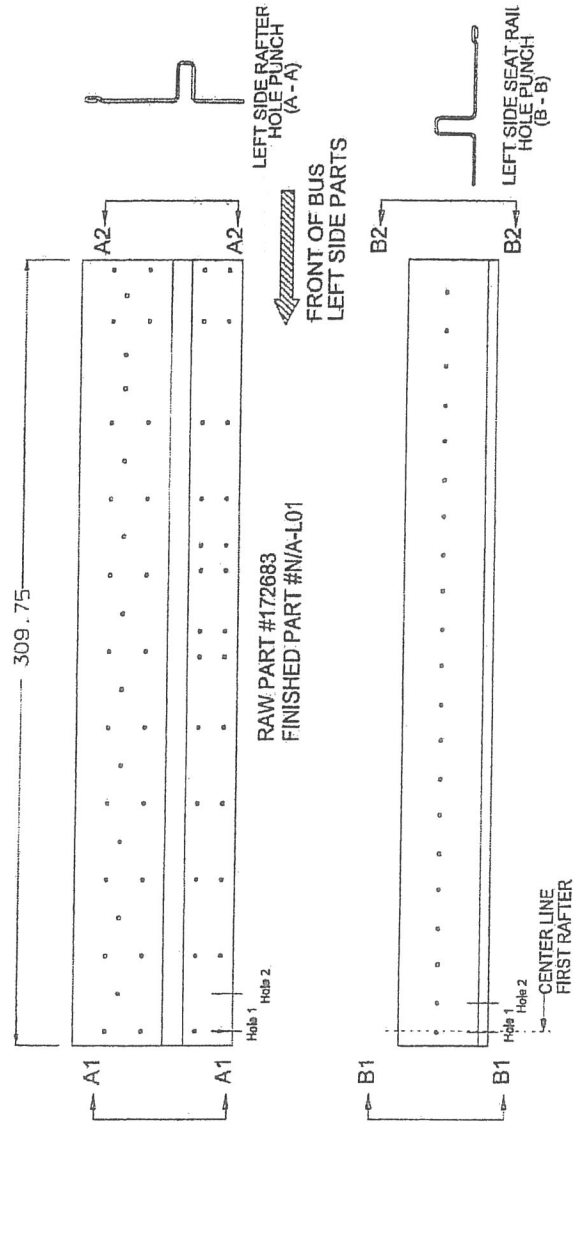
- 1 [FL-84C-003] PRIMARY MODE GEARS, 5 FORWARD

END.

ON-SITE DIESEL DELIVERY



LEFT SIDE RAFTER HOLES		LEFT SIDE SEAT HOLES		RIGHT SIDE SEAT HOLES		RIGHT SIDE RAFTER HOLES	
HOLE DIM "A"	HOLE "A" TYPE	HOLE DIM "B"	HOLE DIM "C"	HOLE DIM "D"	HOLE DIM "E"	HOLE DIM "F"	HOLE DIM "G" TYPE
1	4.188 90S.563 R1	1	2.637 296.813	1	10.083	1	0.563 R1
2	4.188 90S.563 SL	2	26.167 281.563	2	19.462	2	10.563 DF
3	24.188 285.563 R1	3	42.237 267.513	3	34.813	3	15.563 SL
4	37.587 272.163 SL	4	57.587 232.163	4	48.063	4	30.563 R1
5	50.887 258.063 SL	5	71.637 238.113	5	64.313	5	45.563 SL
6	64.188 245.563 R1	6	86.907 222.763	6	78.463	6	60.563 R1
7	78.188 230.563 SL	7	101.037 208.713	7	93.813	7	75.563 SL
8	94.188 215.563 R1	8	118.307 193.363	8	107.963	8	90.563 R1
9	109.188 200.563 SL	9	130.438 179.313	9	123.313	9	105.563 SL
10	122.447 187.303 R3	10	145.767 183.963	10	137.463	10	120.563 R1
11	134.447 175.303 WH	11	163.837 149.013	11	152.813	11	135.563 SL
12	144.188 165.563 R2	12	175.187 134.563	12	168.962	12	148.303 R3
13	154.188 155.563 R2	13	189.237 120.513	13	182.312	13	158.303 R3
14	164.447 140.563 SL	14	204.567 105.163	14	196.462	14	168.303 R3
15	174.188 130.563 R1	15	218.837 91.113	15	211.812	15	178.303 R3
16	184.188 120.563 R1	16	233.907 75.763	16	225.962	16	188.303 R3
17	194.188 110.563 SL	17	248.037 61.713	17	241.312	17	198.303 R3
18	204.188 100.563 SL	18	263.307 46.363	18	255.462	18	208.303 R3
19	214.188 90.563 SL	19	277.438 32.313	19	270.813	19	218.303 R3
20	224.188 80.563 SL	20	292.788 16.962	20	284.962	20	228.303 R3
21	234.188 70.563 SL	21	304.368 5.382	21	300.313	21	238.303 R3
22	244.188 60.563 SL						
23	254.188 50.563 SL						
24	264.188 40.563 SL						
25	274.188 30.563 R1						
26	284.188 20.563 SL						
27	294.187 15.563 DP						
28	304.188 5.563 R1						

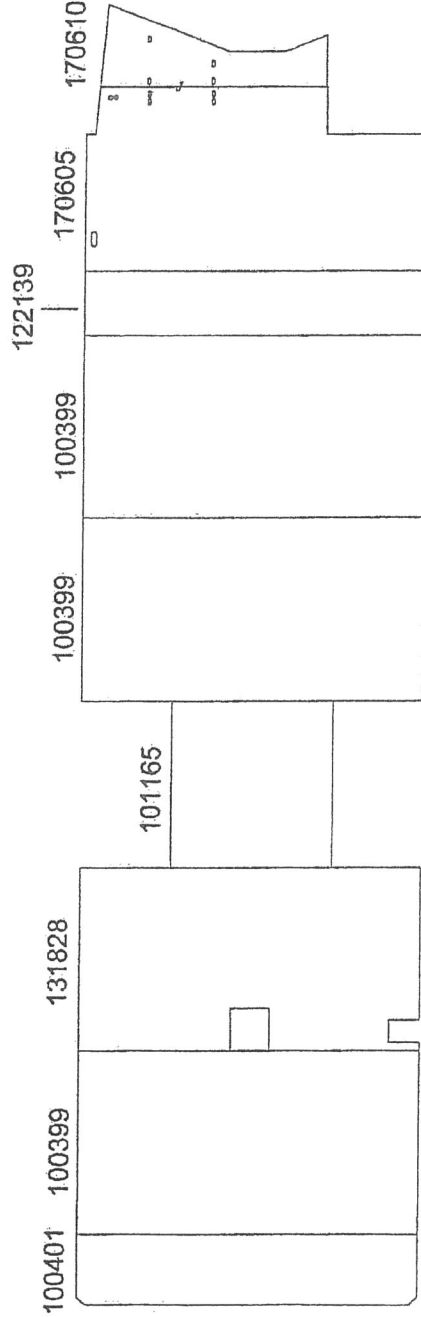


Model: Saf-T-Liner C2
 Units Ordered: 1
 Order Number: N/A
 Quote Number: 2800065
 Locality: GUAM
 Build Date: N/A

THOMAS BUILT BUSES, INC.
 1811 INDUSTRIAL AVENUE, SUITE 100
 WASHINGTON, MISSISSIPPI 39292
 TEL: 662-939-1111 FAX: 662-939-1112
 WWW.TBBI.COM

TITLE: SEAT RAIL - C2
 BODY 281TS
 DATE: 11/14/14 BY: WASH/LET
 SCALE: 3/8"=12" | SI 558409

GENERAL NOTES:
 1. ALL DIMENSIONS ARE TO CENTER UNLESS SPECIFIED OTHERWISE.
 2. ALL DIMENSIONS ARE TO CENTER UNLESS SPECIFIED OTHERWISE.
 3. ALL DIMENSIONS ARE TO CENTER UNLESS SPECIFIED OTHERWISE.
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 9. ALL DIMENSIONS ARE TO CENTER UNLESS SPECIFIED OTHERWISE.
 10. ALL DIMENSIONS ARE TO CENTER UNLESS SPECIFIED OTHERWISE.



	7.1
	14.1
	24.1
	33.2
	33.2
	24.1
	14.1
	7.1

FRONT OF BUS 

RAW PART	CUSTOM PART	QTY
170610		
170605		
122139		
100399		
100399		
101165		
131828		
100399		
100401		

Model: Saf-T-Liner C2
 Units Ordered: 1
 Order Number: N/A
 Quota Number: 280065
 Locality: GUAM
 Build Date: N/A

GENERAL NOTES
 1. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
 2. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
 3. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
 4. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
 5. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
 6. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
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 13. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
 14. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
 15. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
 16. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
 17. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
 18. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
 19. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.
 20. THIS BUS BODY IS TO BE USED WITH SAF-T-LINER C2 CHASSIS.

THOMAS BUILT BUSES, INC.
 TITLE: PLYWOOD FLOOR BODY 281TS
 SCALE: 3/8"=12" | S | 558409

* * * WEIGHT DISTRIBUTION REPORT * * *

***** WEIGHT O.K. *****

```

SEATINGPLAN: 558409
ORDER NO: 280065
YARD NO:
BODY MODEL: 281TS
CHASSIS MAKE: FLNER
WHEELBASE: 238.2
DATE: 07-11-14
TIME: 07:27:30
    
```

Weight Summary	Front	%Front	Rear	%Rear	Total
Total Weight	7651.26	30%	17496.54	70%	25147.80
Allowables	10000.00		19000.00		29000.00
Unladen	6973.89	39%	10823.91	61%	17797.80
Base Body	960.53		4647.27		5607.80
Body Options	321.46		1621.54		1943.00
Base Chassis	4600.00		2800.00		7400.00
Chassis Options	1091.90		1755.10		2847.00
Passenger	677.37		6672.63		7350.00
State Special	0.00		0.00		0.00

NOTES:

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*****
* THE WEIGHT AND AXLE RATINGS IN THIS REPORT APPLY ONLY TO *
* ORDER NO. 280065 AND REFERENCE SEATING PLAN 558409 *
* ANY OPTIONS EXCEEDING 20 LBS. OR SEATING PLAN CHANGES NOT ON *
* THIS REPORT OR MADE AFTER THE SUBMISSION DATE AND TIME WILL *
* NULLIFY RESPONSIBILITY OF THOMAS BUILT BUSES ENGINEERING *
* DEPARTMENT OF THE SAFE OPERATION OF THE VEHICLE *
*****
    
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* THIS SHEET MUST ACCOMPANY ORIGINAL ORDER.
SIGNATURE OF ENGINEERING APPROVAL:

Diann Overcash

***** BODY OPTIONS *****		Front	Rear	Total
Option	Description			
A00000130	CG ADJUSTMENT	0.00	0.00	0.00 **
B640139200	39" BARR-VERT, WALL MT 45"H RS RIGHT SIDE	21.77	9.23	31.00
B640239000	39" BDEG BARR-REV. WALL-MT 45"H LEFT SIDE	22.77	8.23	31.00
B640939000	39" FMVSS HIGH BACK PASS SEAT LEFT SIDE	39.55	22.45	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT LEFT SIDE	31.90	30.10	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT LEFT SIDE	24.24	37.76	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT LEFT SIDE	16.59	45.41	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT LEFT SIDE	8.94	53.06	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT LEFT SIDE	1.29	60.71	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT LEFT SIDE	-6.37	68.37	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT LEFT SIDE	-14.02	76.02	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT LEFT SIDE	-21.67	83.67	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT LEFT SIDE	-29.32	91.32	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT RIGHT SIDE	37.60	24.40	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT RIGHT SIDE	29.92	32.08	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT RIGHT SIDE	22.24	39.76	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT RIGHT SIDE	14.56	47.44	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT RIGHT SIDE	6.88	55.12	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT RIGHT SIDE	-0.80	62.80	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT RIGHT SIDE	-8.47	70.47	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT RIGHT SIDE	-16.15	78.15	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT RIGHT SIDE	-23.83	85.83	62.00
B640939000	39" FMVSS HIGH BACK PASS SEAT RIGHT SIDE	-31.51	93.51	62.00

* * * WEIGHT DISTRIBUTION REPORT * * *

D105400001	FAN-CIRC MID W/S HDR BLACK	2.70	0.30	3.00
D105600000	FAN-CIRC DRV'S WDO HDR BLACK	2.50	0.50	3.00
D106600003	HORN-SPEAKER LS COWL LEG	2.10	-0.10	2.00
D106900003	RADIO-AM/FM W/CD & PAGE	11.77	-1.77	10.00
D108800002	FLAPS-MUD, REAR 22.5"W	0.00	12.00	12.00
D108900001	FLAPS-MUD, FRONT 16"W X 12"H	10.74	1.26	12.00
D109000000	HOOKS-TOW, REAR BOLTED (2)	-4.53	13.53	9.00
D110024SCO	KIT, FIRST AID 24 UNIT S.C.	3.60	0.40	4.00
D110100000	KIT, BODYFLUID CLEANUP NAT. MIN.	2.85	0.15	3.00
D122400000	TRIANGLES-REFL. 3 W/BOX	7.12	3.88	11.00
D123000002	DOOR-STORAGE BOX W/O GLASS	24.21	5.79	30.00
D123800000	ANTENNA - RADIO SWIVEL BASE	1.73	0.27	2.00
D300601002	DOOR-ACC SOLID PANEL	19.16	0.84	20.00
D400300000	OPER-MONITOR WARN/S/T/T	1.63	0.37	2.00
D400700281	LPS-DOME PASS MIN (6) 281T	1.01	3.99	5.00
D406212008	LPS-WARNING LED STROBE (8)	2.11	7.89	10.00
D500601015	SIGN-STOP, AIR FRT #2980C	13.53	0.47	14.00
D505705021	FENDERETTE, STEEL, 21" BOX RS	0.00	6.00	6.00
D508200003	RS STORAGE BOX 1 - 30" WIDE	16.90	73.10	90.00
D510900000	VENT-STATIC PRESENT	1.13	0.87	2.00
D601700281	FLR-PLYWOOD 5/8" 281T	20.95	287.05	308.00
D602001281	SPEAKERS-INT. 30 WAT. (6) 281T	7.00	0.00	7.00
D610339002	RAIL-ASSIST FRT ENT DR 39"W	5.68	2.32	8.00
D900104000	BACK-NATIONAL DRV'S SEAT	37.73	12.27	50.00
STDRH1900	ROOF HATCH MODEL 1900 ENG (D107303000)	-0.39	9.39	9.00
STDRH1900	ROOF HATCH MODEL 1900 ENG (D107303000)	4.15	4.85	9.00

Body Option Total		321.46	1621.54	1943.00

***** CHASSIS OPTIONS *****				
Option	Description	Front	Rear	Total
FL-018-002	AIR BRAKE PACKAGE	119.96	130.04	250.00
FL-093-1R6	FT GDY G661 HSA 11R22.5 14 PLY	252.00	0.00	252.00
FL-094-1R6	RR GDY G661 HSA 11R22.5 14 PLY	0.00	504.00	504.00
FL-101-2N2	CUM ISE 6.7-200HP @ 2300 RPM	336.66	-37.66	299.00
FL-122-080	ALLIANCE FUEL FILTER/WATER SEP	15.00	0.00	15.00
FL-124-1AB	LN 12V 200 AMP #940 PAD MT ALT	21.26	-1.26	20.00
FL-155-057	DELCO 12V 29MT STARTER WITH M	10.00	0.00	10.00
FL-230-001	60 GAL/227 LIT STEEL TANK, BTR	-180.67	689.67	709.00
FL-23U-004	11.5 GALLON DEF TANK	185.30	26.70	212.00
FL-266-1AH	750 SQUARE INCH DOWN FLOW RADI	20.00	0.00	20.00
FL-275-034	PAGE W/CHASS MTD EXTERNAL SPKR	4.00	0.00	4.00
FL-292-097	(2)ALLIA 1131 GP31 12V 1900CCA	5.68	4.32	10.00
FL-342-1MJ	ALLISON 2500 PTS AUTO TRANS	41.46	-2.46	39.00
FL-393-001	DRIVELINE GUARD	15.00	15.00	30.00
FL-400-1A5	DA-F-10-3 10K 71.5 KPI/3.74 AX	40.00	0.00	40.00
FL-402-021	MERITOR 15X5Q+ CAM FRT BRK ROC	60.00	0.00	60.00
FL-418-030	CONNMET IRON FRONT HUBS	0.00	0.00	0.00 **
FL-419-023	CONNMET CAST IRON FRT BRK DRUMS	0.00	0.00	0.00 **
FL-420-1F9	DA-RS-19-2 19K R-SRS SGL AXLE	0.00	260.00	260.00
FL-450-030	CONNMET IRON REAR HUBS	0.00	0.00	0.00 **
FL-451-023	CONNMET CAST IRON RR BRAKE DRUM	0.00	0.00	0.00 **
FL-480-009	BENDIX AD-9 AIR DRYER W/HEATER	40.00	0.00	40.00
FL-502-653	FRONT AC 22.5X8.25 10HP, 5-HAND	-8.00	-0.00	-8.00
FL-505-653	REAR AC 22.5X8.25 10HP, 5-HAND	-8.00	-0.00	-8.00
FL-536-050	TRW THP-60 POWER STEERING	10.00	0.00	10.00
FL-545-605	6050MM (238") WHEELBASE	0.00	0.00	0.00 **
FL-552-016	3425MM (135") RR FRAME OVRHANG	0.00	0.00	0.00 **
FL-556-1C1	ONE-PIECE 14" PTD STEEL BUMPER	46.88	-6.88	40.00
FL-558-001	FRT FRAME MOUNTED TOW HOOKS	17.52	-2.52	15.00
FL-620-062	10000 LB. TAPERLEAF FRT SUSPEN	40.00	0.00	40.00
FL-622-1DT	COMFORT TRAC 19K RR SPRIN SUSP	0.00	-23.00	-23.00
FL-650-021	CAB MOUNTING HOOD/COWL CHASSIS	0.00	0.00	0.00 **
FL-716-014	WINDSHIELD FAN, (1) HEADER MTD	2.85	0.15	3.00
FL-746-019	CUSTOMER FURNISHED RADIO	5.01	-1.01	4.00

Chassis Option Total		1091.90	1755.10	2847.00

***** PASSENGER WEIGHTS *****						
# Option	Description	Side	Front	Rear	Total	
1 D900104000	BACK-NATIONAL DRV'S SEAT	SIDE	113.19	36.81	150.00	
3 B640939000	39" FMVSS HIGH BACK PASS SEAT LE	LEFT SIDE	234.17	125.83	360.00	
3 B640939000	39" FMVSS HIGH BACK PASS SEAT LE	LEFT SIDE	189.73	170.27	360.00	
3 B640939000	39" FMVSS HIGH BACK PASS SEAT LE	LEFT SIDE	145.30	214.70	360.00	

* * * WEIGHT DISTRIBUTION REPORT * * *

3 B640939000	39"	FMVSS HIGH BACK PASS SEAT LE	LEFT SIDE	100.87	259.13	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT LE	LEFT SIDE	56.43	303.57	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT LE	LEFT SIDE	12.00	348.00	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT LE	LEFT SIDE	-32.43	392.43	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT LE	LEFT SIDE	-76.87	436.87	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT LE	LEFT SIDE	-121.30	481.30	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT LE	LEFT SIDE	-165.73	525.73	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT RI	RIGHT SIDE	222.83	137.17	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT RI	RIGHT SIDE	178.25	181.75	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT RI	RIGHT SIDE	133.66	226.34	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT RI	RIGHT SIDE	89.08	270.92	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT RI	RIGHT SIDE	44.49	315.51	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT RI	RIGHT SIDE	-0.09	360.09	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT RI	RIGHT SIDE	-44.68	404.68	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT RI	RIGHT SIDE	-89.26	449.26	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT RI	RIGHT SIDE	-133.84	493.84	360.00
3 B640939000	39"	FMVSS HIGH BACK PASS SEAT RI	RIGHT SIDE	-178.43	538.43	360.00

Passenger Totals				677.37	6672.63	7350.00



ADDRESS: 197 Ypao Road Tamuning GUAM 96913
 OFFICE: Phone 1-671-649-1946
 Fax 1-671-649-1947
 SPARE Phone 1-671-646-7914
 PARTS: Fax 1-671-646-7900
 WEB: www.morriceoequipment.com



15 Sept 2014

Claudia S. Acfalle
 Chief Procurement Officer
 General Services Agency
 Government of Guam
 148 Route 1, Marine Drive
 Piti, Guam, 96915

Dear Claudia,

Re: IFB : GSA-065-14 School Bus (60 Passengers) & IFB "GSA-059-14 : Heavy Equipment Vehicles"

Our recent frustration in participating in the two above mentioned IFB's and the advice that GSA has prompted this correspondence.

As discussed we agree GSA would benefit from the technical assistance on writing bid specs. We would suggest GSA seek qualified advice from a reasonable number of qualified suppliers and manufacturers to prepare their equipment specifications. After receiving qualified advice from the manufacturer's engineering departments, an informal review of the draft bid specifications by qualified Guam dealers will result in a biddable specification.

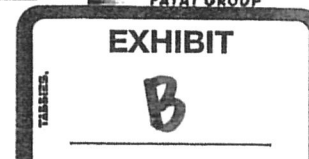
Equipment specifications for GSA-059-14 IFB in this bid have raised a lot of questions and amendments attempting to answer question and in some cases raising more questions. The specifications and the time line provided to bidders were incorrect as were the answers to the bidder's questions supplied by DPW. As a last resort, a bid protest was required by Morrico Equipment LLC on GSA-059-14. This process cost our company and the Guam taxpayer many thousands of dollars.

The school bus specifications require DPW to research the manufacturing process and accept that a combination of both rivets and screws are in fact used by all bus manufacturers in the body panel installation. Screws are specified deliberately in high impact areas in order to allow the damaged panel to be replaced with ease. There is no difference in the corrosion properties of either process. This was even explained and demonstrated to DPW personnel at the Thomas Built bus factory post construction visit in 2013.

The warranty clause also requires adjustment to reflect the real world of manufacturer's warranty. Gov Guam is requesting bidders to guess and pay for the number of "wear items" that will fail in the first 12 months of government operation. Wear items are not covered by any manufacturer's warranty. The wording of this clause is delaying the procurement process.

These comments come directly from the Thomas Built Bus factory and Daimler Trucks North America LLC.

ON-SITE DIESEL DELIVERY





ADDRESS: 197 Ypao Road Tamuning GUAM 96913
 OFFICE: Phone 1-671-649-1946
 Fax 1-671-649-1947
 SPARE Phone 1-671-646-7914
 PARTS: Fax 1-671-646-7900
 WEB: www.morricequipment.com



While we understand GSA would prefer to remain independent, we feel manufacturer are the only qualified parties to assist with bid specs. End user will always have brand preferences and biases that may defeat the purpose of soliciting their assistance.

The following Guam Procurement regulation spells out how Gov Guam "shall" write their specs. GSA and contributing government departments "shall provide" manufacturers or suppliers opportunity comment on the draft specification. See Below. Item 7 (c).

Take note of the item that states : " It is the policy of the territory that specifications permit **maximum practicable competition** consistent with this purpose...".

XIV. (BID) SPECIFICATIONS

A. SPECIFICATIONS ARE THE BEDROCK OF PROCUREMENT: "The purpose of a specification is to **serve as a basis** for obtaining a supply ... item adequate and suitable for the territory's needs in a cost effective manner.... It is the policy of the territory that specifications permit **maximum practicable competition** consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the **territory's requirements**" (2 GAR § 4102(a)(1).)

Thus, the *most critical and first step* in planning and soliciting is to *get the specifications right*.

Guam Procurement Process Primer Ver 1.5 © John Thos. Brown 2009 Page 52

7. Preparation and use of **specifications for Common or General Use Items** (2)

GAR § 4103(b)(2)(a):

c. The drafter of the specification **shall** provide the using agency(ies) **and a reasonable number of manufacturers and suppliers an opportunity to comment** on the draft specification

Regards,

Torgun Smith

Torgun Smith
 Executive Vice President
 Morrico Equipment LLC

saved as · IFB GSA-065-14 School Bus (60 PAX) Q 15 Sept 2014

ON-SITE DIESEL DELIVERY



COPY

Department of Administration
General Services Agency
Government of Guam

Invitation for Bid (IFB) Number
GSA-065-14

Opening Date
8/12/2014

Time
2:00 PM

ABSTRACT OF BIDS

School Bus (60 Passenger)

OFFEROR(S)	Acceptance Time	Delivery Acceptance	Delivery Specified IN IFB (Days)	ABSTRACT OF BIDS														
				A	B	C	D	E	F	G	H	QTY. Unit	Unit Cost (12 Each)	Extended Amount				
1) <u>Morence Equipment, L.L.C.</u>			see note															
2) <u>1D Bid # GSA-065-14 Bid # BD-BD-GUM-2014-1053</u> <u>5 1/2 of Bid Amt (see 10/11/2014 *Certify Inc. Co. (Guam) LTD.</u>			see note	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	102,769.00	1,233,228.00			
3) <u>Triple J Ent. Inc. aka: Triple J. No. 105</u>			see note	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	99,990.00	1,199,880.00			

Transp. Thomas Built Buses, Inc.
Year: 2015
Model: SCL-T-Liner C2
Origin: High Point, NC
Date of Delivery: within 180 Days

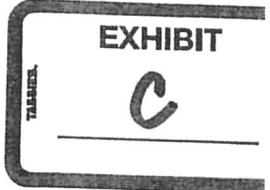
Transp. Blue Bird Corp
Year: 2016
Model: Blue Bird
Origin: USA
Date of Delivery: As Specified

LEGEND(S)

- (A) Ethical Standards Affidavit
- (B) No Gratuities or Kickbacks Affidavit
- (C) DOL/Sex Offenders Compliance Affidavit
- (D) Non-Collusion Affidavit
- (E) Disclosing Ownership & Commissions Affidavit
- (F) Contingent Fees Affidavit
- (G) Bid-Bond Form
- (H) Brochures / Descriptive Literature

I hereby certify that all bids received in response to this invitation were opened under my personal supervision and that the same as of all bidders have been entered hereon.

Signature: *[Signature]*
 Name: R. D'Arcey
 Title: Bidder
 Date: 8/12/2014



PROTEST RESPONSE

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

Ray Tenorio
Lieutenant Governor

Benita A. Manglona
Director

John A.B. Pangelinan
Acting Deputy Director

December 1, 2014

Memorandum

Mr. Kevin Fowler
c.o Dooley Roberts & Fowler LLP
Suite 201, Orleans Pacific Plaza
865 South Marine Corps Drive
Tamuning, Guam 96911



Re: Protest Submitted on November 21, 2014 on GSA Bid No 065-14
(School Bus -60 Passenger)

Dear Mr. Fowler:

I am in receipt of your memorandum dated November 21, 2014, in which you are protesting the above entitled bid.

On November 10, 2014, you filed a protest on the same matter. On November 13, 2014, the General Services Agency denied your protest and advised you that you had the right to seek any administrative or judicial review authorized by law. On November 18, 2014, you filed your appeal with the Office of Public Accountability (OPA case number 14-011).

This current protest raises several new issues not previously raised in your prior protest and appeal. First is that you believe that you and or your client were not notified of the settlement and should have been involved in such discussion. Please note that you were not a party to the appeal and did not properly intervene as required to be a party. As such, no notice was required to be given to you.

Nevertheless, the government did contact your client, Morrico on two separate occasions prior to the settlement asking if your client would agree the split offered in the agreement. No answer was received and the government and the other party moved forward with the agreement

Secondly, you raise the issue of specifications not being met by Triple J's submission. This protest is untimely as the law requires you to file a protest 14 days from when you knew or should have known about it. You were aware of the specifications submitted by Triple J on the bid opening date. Further, your client filed a Freedom of Information request on October 7th for Triple J's bid, giving you the opportunity to know whether the

specifications were met by Triple J. On October 14th at 9am your client reviewed the Triple J package.

5 GCA Section 5425(a) states in pertinent part:

Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method ofaward may protest to the Chief Procurement Officer.... 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.

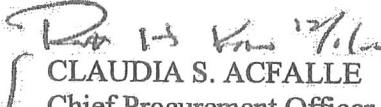
Your submission arguing the submission of these specifications issue is now late

In 5 GCA Section 5425(g) states in pertinent part:

In the event of a timely protest under Subsection (2) of this Section or under Subsection (1) of Section 5480 of this Chapter, the Territory shall not proceed further with the solicitation or the award of the contract prior to final resolution of such protest, and any such further action is void.

We do not believe that your appeal to the Office of Public Auditor was timely. However, as noted above, you filed a protest with the General Services Agency and subsequently, an appeal with the Office of Public Auditor to which we are awaiting an action. Because of the above stated section, we are unable to proceed with this request.

Therefore, your protest is STAYED pending the outcome of the current appeal You may seek whatever administrative or Judicial review is authorized by law.


CLAUDIA S. ACFALLE
Chief Procurement Officer

OTHER CORRESPONDENCE

GOVT OF GUAM

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

CABOT
MANTANONA LLP
929 South Marine Corps Drive, Ste. 200
Tamuning, Guam 96913
Telephone: (671) 646-2001
Facsimile: (671) 646-0777

2014 DEC -1 PM 4: 52

RECEIVED

DATE: 12/1/14
TIME: 4:19 AM PM BY: JL
FILE NO OPA-PA: 14-009

THE OFFICE OF PUBLIC ACCOUNTABILITY

IN THE MATTER OF APPEAL	)	APPEAL NO. OPA-PA-14-009
)	
OF	)	OPPOSITION TO MOTION TO SET
	)	ASIDE ORDER DISMISSING APPEAL
TRIPLE J ENTERPRISES, INC.,	)	WITH PREJUDICE; CROSS-MOTION
	)	FOR RATIFICATION AND
	)	AFFIRMANCE OF CONTRACT
Appellant)	
_____)	

COMES NOW Triple J Enterprises, Inc. ("Triple J" or "Appellant"), by and through undersigned counsel of record, and hereby files its Opposition to Motion to Set Aside Order Dismissing Appeal with Prejudice and Cross-Motion for Ratification and Affirmance of Contract, pursuant to the Order of the Office of Public Accountability ("OPA") dated and filed in the above-captioned appeal on November 20, 2014.¹

I. Factual and Procedural Background

On or about September 9, 2014 both Triple J and Morrico Equipment, LLC ("Morrico") received their respective bid statuses from the General Services Agency ("GSA") in connection with Bid Invitation No. GSA-065-14 for the procurement of 60-

¹ Triple J reserves its right to object to the OPA's jurisdiction over this appeal at this point in time, given that this matter was dismissed with prejudice by the OPA's Order on November 10, 2014. To that end, Triple J files this motion by way of a special appearance in an effort to comply with the OPA's Order of November 20, 2014 and to respond to issues raised concerning, among other things, the OPA's jurisdiction to entertain the Motion to Set Aside Order Dismissing Appeal with Prejudice that was filed subsequent to dismissal with prejudice of the above-captioned appeal.

passenger school buses (“IFB” or “the Bid”). At bid opening on August 12, 2014, it had been revealed that Triple J’s bid price was substantially lower than Morrico’s bid price. Triple J’s Bid Status indicated that its bid was rejected due to non-conformance with the specifications, and the Remarks on its Bid Status indicated that Triple J’s bid was rejected due to its failure to submit with its bid package the drawings/seating plans for the buses as part of the descriptive literature requested by GSA in the “Generals” for the IFB. On September 23, 2014, Triple J filed three (3) timely, formal protests to GSA of its Bid Status and GSA’s apparent decision to cancel and re-bid the underlying procurement, which protests were subsequently denied. Within fifteen (15) days of receiving GSA’s decision on its protests, Triple J filed a timely Notice of Appeal with the OPA in the above-captioned matter.

Like Triple J, Morrico received a Bid Status on or about September 9, 2014, indicating that GSA had rejected Morrico’s bid due to non-conformance with the specifications. The Remarks of Morrico’s Bid Status state: “Non-Compliance with the following[:] ‘All exterior body panels, skirts, and rub rails shall be fastened with Anti-Corrosive Rivets.’”² But unlike Triple J, Morrico chose not to file a protest of GSA’s decision to reject Morrico’s bid for non-conformance with the specifications, and instead Morrico merely picked up its original bid status and Bid Bond/Cashier’s Check from GSA. To date, Morrico has not filed a protest of GSA’s decision to reject Morrico’s bid on the grounds stated in its Bid Status.

² Through a response to a Sunshine Act Request, Triple J later learned that GSA had sought clarification from Morrico as to whether its bid would comply with this particular specification, but Morrico’s response to GSA failed to provide such assurances, prompting GSA to reject Morrico’s bid.

Following a series of persistent and good-faith efforts to informally resolve its protests economically, efficiently, and expeditiously, and to avoid protracted litigation and undue delay of a vital procurement need for the Territory, Triple J reached out the Attorney General's Office ("AGO") after filing its Notice of Appeal in the OPA, and prior to the commencement of an action in court, to explore the possibility of settlement. After meaningful discussions with the AGO, Triple J and GSA were able to reach a mutual agreement, and thereafter executed a Settlement Agreement on November 7, 2014 that was filed with the OPA on the same day. The Settlement Agreement was signed by GSA and Triple J, as well as their respective counsel of record in this matter.

On or before 9:17am on November 10, 2014, the OPA signed an Order dismissing with prejudice Triple J's Appeal pursuant the agreement and request of the parties in their Settlement Agreement, thereby avoiding substantial costs to both Triple J and the Territory, and avoiding an unnecessary, protracted delay to a vital procurement need. Triple J submits that this good-faith, arms-length Settlement Agreement reflects and effectuates the purposes and policies underlying Guam's procurement law and serves the best interests of the Territory of Guam, its schoolchildren, and its community.

It appears Morrigo does not share the same sentiment. After the Settlement Agreement was executed and filed, and after the OPA issued an Order dismissing Triple J's Appeal with prejudice as a result of the Settlement Agreement reached in this matter, Morrigo has filed a Motion to Set Aside Order Dismissing Appeal with Prejudice. In its Motion to Set Aside, Morrigo expresses its desire to "be heard with respect to the merits of the Triple J appeal."

On November 20, 2014, the OPA issued an Order establishing a briefing schedule with respect to the Motion to Set Aside, and requesting a written discussion in the briefs of “the OPA’s jurisdiction and authority to grant the relief requested by Morrico, and the standing of Morrico to make the request for relief.”

Triple J submits this Opposition and Cross-Motion in accordance with the OPA’s November 20, 2014 Order.

II. Argument

A. The OPA lacks jurisdiction to grant the relief requested by Morrico in its Motion to Set Aside.

1. This Appeal was resolved and dismissed with prejudice by all parties to the Appeal before the Motion to Set Aside was filed.

Triple J submits that the OPA no longer has jurisdiction to grant the relief requested by Morrico in its Motion to Set Aside. The OPA made a decision to dismiss this Appeal with prejudice before Morrico requested to intervene in this matter or otherwise “be heard” on the merits of Triple J’s appeal.

Whether an administrative agency has the power to reopen administrative proceedings with a view toward reconsidering its earlier adjudicative order is a “question to be determined by an interpretation of the statute that vests the agency with administrative power.” *Sexton v. Mount Olivet Cemetery Ass’n*, 720 S.W.2d 129, 138 (Tex. App. 1986), *writ refused* NRE (Jan. 28, 1987).

Title 5 Guam Code Annotated (“GCA”) § 5703 provides, in pertinent part:

The Public Auditor shall have the power to review and determine *de novo* any matter **properly submitted** to her or him. . . . The Public Auditor **may** consider testimony and evidence submitted by any **competing** bidder,

offeror or contractor of the protestant. The Public Auditor's jurisdiction shall be utilized to promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5.

5 GCA § 5703 (emphases added).

Morrigo's Motion to Set Aside is not "properly submitted" to the Public Auditor because she has already dismissed this matter with prejudice, thereby divesting the OPA of jurisdiction. *Id.* Moreover, the Public Auditor "may," but is not required to, consider testimony and evidence of a competing bidder.³ *Id.*; see also 5 GCA § 5030(m) ("May denotes the permissive."). Therefore, a strict and plain interpretation of the statute that must be reviewed in order to determine whether the OPA is vested with the power to reopen administrative proceedings, namely, 5 GCA § 5703, clearly does not provide the OPA with jurisdiction over Morrigo's Motion to Set Aside.

Additionally, the power of administrative agencies to reopen proceedings following dismissal with prejudice, where allowed, "must be sparingly used." See *Malone v. Civil Serv. Comm'n*, 646 N.E.2d 150, 154 (Mass. Ct. App. 1995) (citation and internal quotation marks omitted). It is not necessary for the agency to reopen administrative proceedings "merely because some new piece of evidence has come to light that was not before the agency at the time it made its decision." *Am. Min. Cong. v. Marshall*, 671 F.2d 1251, 1257 (10th Cir. 1982). Otherwise, "if every new circumstance or fact were to be the basis of a reopening of the administrative proceeding, there would be little hope that the administrative process would ever be consummated." *Wilson &*

³ Triple J submits that once Morrigo failed to file a timely protest to challenge GSA's rejection of its bid, Morrigo was no longer a "competing" bidder.

Co. v. United States, 335 F.2d 788, 799 (7th Cir. 1964) (citation and internal quotation marks omitted).

Because the OPA no longer retains jurisdiction over this Appeal, Morrico is not entitled to “be heard” on the merits of the Appeal. Likewise, due to Morrico’s lack of standing, as explained in greater detail below, the OPA is jurisdictionally precluded from granting the relief sought by Morrico in its Motion to Set Aside, particularly at this stage in the proceedings.

The OPA’s decision to sign the Settlement Agreement and dismiss Triple J’s Appeal with prejudice is an issue that was finally and conclusively determined in this Appeal and cannot be reopened now at the administrative level; instead, appeals of decisions made by the Public Auditor must be taken to the Superior Court of Guam. See 5 GCA § 5707; see also *id.*, § 5425(f) (“A decision of the Public Auditor is final unless a person adversely affected by the decision commences an action in the Superior Court in accordance with Subsection (a) of § 5480 of this Chapter.”); *id.*, § 5704 (“Any determination of an issue . . . by the Public Auditor shall be final and conclusive unless arbitrary, capricious, fraudulent, clearly erroneous, or contrary to law.”); *id.* (“Any decision of the Public Auditor . . . shall entitle to great weight and the benefit of reasonable doubt.”).

Because the OPA lacks jurisdiction to grant the relief sought in Morrico’s Motion to Set Aside, the Motion to Set Aside must be denied.

2. Morrico lacks standing to request the relief sought in its Motion to Set Aside because it is not an Interested Party and was not a party to the proceedings of the Appeal before the Appeal was resolved and dismissed.

Morrigo's lack of standing is another reason why the OPA lacks jurisdiction to grant the relief requested in Morrigo's Motion to Set Aside. Triple J submits that Morrigo did not and cannot establish standing to request the relief sought in its Motion to Set Aside, and on these independent grounds alone, Morrigo's Motion to Set Aside must be denied.

Morrigo's lack of standing can be traced back to its failure to file a protest—let alone a timely protest—of GSA's decision to reject its bid for non-compliance with the specifications of the IFB. Under 5 GCA § 5425, due process rights are afforded to actual bidders "who may be aggrieved" in connection with the award of a contract, by allowing aggrieved bidders to protest to the Chief Procurement Officer "within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto." 5 GCA § 5425(a); *see also* 2 Guam Administrative Rules and Regulations ("GARR"), Div. 4, § 9101(c)(1) ("Protests filed after the 14 day period shall not be considered.").

In its Motion to Set Aside, Morrigo refers to itself as an "Interested Party" in the above-captioned appeal. *See, e.g.*, Motion to Set Aside, p. 1 (capital letters in original). Despite Morrigo's attempt to label itself as an Interested Party, Guam's procurement law provides otherwise. *See* 2 GAR, Div. 4 § 9101(a) ("Interested Party means an actual or prospective bidder, offeror, or contractor **that may be aggrieved** by the solicitation or award of a contract **and who filed a protest.**" (emphases added)); *see also* 2 GAR,

Div. 4. § 12102(b) (“Interested Party means an actual or prospective bidder, offeror, or contractor who appears to have a substantial and reasonable prospect of receiving an award if the Appeal is denied.”).

Based on a clear and plain reading of this language, Morrico was not an Interested Party under either definition, not when GSA was still considering Triple J protest, nor when Triple J’s protest found its way to the OPA on appeal. Again, Morrico failed to file a protest, so it does not qualify as an Interested Party under 2 GAR, Div. 4, § 9101. In turn, Morrico’s failure to protest GSA’s decision to reject its bid for non-conformance with the specifications of the IFB left Morrico with a zero-percent (0%) prospect of receiving an award under the IFB if Triple J’s Appeal were denied by the OPA. Accordingly, Morrico’s zero-percent (0%) prospect translated into a zero-percent (0%) interest, so Morrico does not qualify as an Interested Party under 2 GAR, Div. 4, § 12102(b).

In its Motion to Set Aside, Morrico complains that “[t]he Chief Procurement Officer of the GSA did not give notice to Morrico of the Triple J appeal.” But GSA was not required to do so. See 2 GAR, Div. 4, § 12104(c)(2) (“The Chief Procurement Officer . . . shall give notice of the Appeal to the contractor if award has been made or, if no award has been made, to all **Interested Parties.**” (emphasis added)). Because an award was made, and because Morrico was not and is not an “Interested Party” in the above-captioned Appeal, Morrico was not entitled to notice of Triple J’s appeal.

Morrigo also lacks standing because it is not “aggrieved” in connection with the award of Triple J’s contract (i.e., the Settlement Agreement). Under a traditional

standing analysis, once Morrico decided to forego its opportunity and due process right to protest GSA's decision to reject Morrico's bid as non-responsive to the IFB, Morrico lacked standing to challenge the Settlement Agreement. See John Thomas Brown, *Procurement Primer*, v. 2.1 (2011) (citing *U.S. v. IBM*, 892 F.2d 1006, 1012 (Fed. Cir. 1989)):

If a bid is not responsive, the protester has no more right to invoke the office of the board than the proverbial man on the street. A nonresponsive bidder is the epitome of one who lacks a direct economic interest. This is not a mere technicality; it is the predicate for the board's right to intervene in governmental procurements.

"A bidder's standing to protest a contract given to another cannot be divorced from the responsiveness of its offer." *CHE Consulting, Inc. v. U.S.*, 47 Fed. Cl. 331 (Fed. Cl. 2000) (quoting *U.S. v. IBM*, 892 F.2d at 1012). Morrico's failure to submit a responsive bid and to challenge GSA's rejection of its bid in this IFB results in Morrico's failure to establish a sufficiently direct economic interest, or nexus, to the outcome of Triple J's Appeal. See *Dismas Charities, Inc. v. U.S.*, 75 Fed. Cl. 59, 60 (Fed. Cl. 2007) (limiting standing of actual bidder to protest decision of agency to award contract only if the actual bidder's "direct economic interest" would be affected by the award of the contract or by failure to award the contract).

In order to meet the "direct economic interest" prong of the standing analysis, the actual bidder must show "not only some significant error in the procurement process, but also that there was a substantial chance that it would have received the contract but for that error." *Id.* (citation and internal quotation marks omitted); see also *id.*, at 60 ("This Court has held that a bidder submitting a nonresponsive bid has no standing to

protest an award, because it has no chance of receiving the award.” (citation and internal quotation marks omitted)).

Because Morrico did not protest GSA’s determination that its bid was non-responsive to the IFB, and because Morrico cannot be considered “aggrieved” or otherwise legally interested in the outcome of Triple J’s Appeal, Morrico lacks standing to request the relief it seeks in its Motion to Set Aside. For the same reasons, Morrico is not entitled “to be heard”; neither Morrico’s opinions on the merits of Triple J’s Appeal, nor Morrico’s opinion on its own failure to comply with the specifications of the IFB, are properly before the OPA, and any due process rights Morrico would have been entitled to in the event of a timely protest have been voluntarily waived by Morrico. See Procurement Primer, p. 243 (“OPA does not have jurisdiction of matters merely incidental to procurement”); *id.*, p. 315-316 (noting that Guam’s procurement law and regulations do not require the presence of anyone other than the agency and the protest at the protest level or the OPA appellate level in determining either the protest or the appeal). For the same reasons, Morrico should be estopped from asserting a right to challenge the merits of or otherwise be heard on Triple J’s appeal at the administrative level. Accordingly, the OPA must deny Morrico’s Motion to Set Aside for lack of jurisdictional standing.

III. Cross-Motion for Ratification and Affirmance of Contract

A. If the OPA determines that it does have jurisdiction to grant the relief requested by Morrico in its Motion to Set Aside, Triple J respectfully requests that the Settlement Agreement be ratified and affirmed in the best interests of the Territory.

In the alternative, Triple J respectfully requests that if the OPA determines that it has jurisdiction to grant Morrico's requested relief, that the OPA exercise its jurisdiction to deny Morrico's Motion, and to ratify and affirm the Settlement Agreement in the best interests of the Territory.

The established purposes and policies of Guam's procurement law include a provision for the "increased economy in territorial activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Territory." 5 GCA § 5001(b)(5). They also provide for a construction and application of Guam's procurement law "to provide for the expeditious resolution of controversies"). 2 GAR, Div. 4, § 12101; *see also* 5 GCA § 5701 ("The Public Auditor shall adopt rules of procedure, which, to the fullest extent possible, will provide for the expeditious resolution of controversies").

Under the Settlement Agreement, Triple J was awarded the sale of nine (9) buses, as well as three-fourths (3/4) of any additional buses procured under available funding. By definition, the Settlement Agreement constitutes Triple J's contract for the sale of nine (9) buses now, and the sale of additional buses later in the above-specified ratio. A "contract" is defined in Guam's procurement law as "all types of territorial agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction." 5 GCA § 5030(d). With a few limited exceptions not

applicable here, “any type of contract which will promote the best interest of the Territory may be used.” *Id.*, § 5235.

In selecting a contract type, the focus of the Territory is to “obtain the best value in needed supplies, services or construction in the time required and at the lowest cost or price to the territory.” 2 GAR, Div. 4, § 3119(b)(1). Factors to be considered includes “the administrative costs to both parties,” “the effect of the choice of the type of contract on the amount of competition to be expected,” and “the urgency of the requirement.” It is clear to Triple J that GSA chose to enter into a Settlement Agreement with Triple J when bearing all of these factors in mind. Upon information and belief, the procurement of these school buses is urgent, and the failure to settle these matters would have come at great administrative cost to both parties. In the same vein, Triple J was informed by GSA that the funding for this IDIQ contract has a limited window for availability, furnishing the parties with another sound reason to select a contract in the form of a Settlement Agreement.

Triple J submits that the Settlement Agreement was entered into freely and voluntarily, and upon independent advice of counsel that was or could have been received by the contracting parties, and the plain language of the Settlement Agreement reflects this. The parties to the Settlement Agreement had full authority to resolve Triple J’s protests while they were awaiting OPA appellate review. See 5 GCA § 5425(b) (“The Chief Procurement Officer . . . or a designee of one of these officers shall have the authority, **prior to the commencement of an action in court concerning the controversy**, to settle and resolve a protest” (emphasis added)); see also 2 GAR,

Div. 4, § 12109(a) (“The Hearing Officer has the power, among others, to . . . [h]old informal conferences to settle, simplify, or fix the issues in a proceeding . . . either by consent of the parties or upon the officer’s own motion.”).

So, too, did the parties to the Settlement Agreement have the authority to enter into this procurement contract. See 5 GCA § 5121(c) (“The Chief Procurement Officer, or [her] designee . . . , shall execute all contracts for the government of Guam.”). The Chief Procurement Officer of GSA entered into this contract upon the advice of its legal counsel, the AGO. See 5 GCA § 5118 (“The Procurement Counsel shall assist and advise the Chief Procurement Officer on all civil matters in which [GSA] is legally interested, providing that the [AGO] shall represent [GSA]”); see also *id.*, § 5150 (“Attorneys General shall, in addition, when he approves contracts, determine not only the correctness of their form, but their legality.”). Deference should be afforded to both GSA’s and the OPA’s decisions to sign the Settlement Agreement as a “full and final settlement of OPA-PA-14-009,” because “absent fraud, collusion, or the like . . . [trial judges] should be hesitant to substitute their judgment for that of experienced counsel.” *Maeda Pacific Corp. v. Gov’t of Guam, et al.*, CV0135-04, p. 4 (Dec. & Order, Jan. 6, 2012) (citing *Cotton v. Hinton*, 559 F.2d 1326 (5th Cir. 1977)).

The determination made by GSA and the OPA to approve the form and legality of the Settlement Agreement, to sign the Settlement Agreement, and to thereby allow Triple J to correct its bid, are deemed “final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.” See 5 GCA § 5245; see also Procurement Primer, p. 301-302 (“The traditional deferential standard is usually said to

be applicable to all administrative determinations across the board.”). Morrico has failed to present any evidence of “cogent and compelling reasons” that the IFB at issue should be cancelled rather than awarding the contract to Triple J pursuant to its Settlement Agreement with GSA. See 2 GAR, Div. 4, § 3115(b).

After an award is made, even where it is determined that award of a contract is in violation of law, if the person awarded the contract has not acted fraudulently or in bad faith, then “the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Territory.” 5 GCA § 5452(a)(1)(A).

Accordingly, if the OPA finds that it is not divested of jurisdiction in the above-captioned appeal, Triple J respectfully requests that the OPA deny Morrico’s Motion to Set Aside, and ratify and affirm the Settlement Agreement, in advancing the interests of administrative economy and in the best interests of the Territory, pursuant to the OPA’s jurisdictional mandate “to promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5.” See 5 GCA § 5703.

B. If the OPA determines that it does have jurisdiction to grant the relief requested by Morrico in its Motion to Set Aside, Triple J respectfully requests that the Settlement Agreement be modified by striking any clauses that offend public policy or Guam’s procurement laws and upholding the validity of the remaining provisions of the Settlement Agreement.

Again, in the alternative, if OPA determines that it does have jurisdiction over Morrico’s Motion to Set Aside, Triple J respectfully requests that certain provisions of the Settlement Agreement be severally stricken or otherwise modified to the extent they violate public policy or Guam’s procurement law, and that the OPA uphold the validity of the remaining provisions.

In its Motion to Set Aside, Morrico states that it was “not a party to the settlement agreement, did not sign the settlement agreement and does not approve the terms of the settlement agreement.” The Uniform Commercial Code of Guam and the law relative to capacity to contract supplement the provisions of Guam’s procurement code. 5 GCA § 5002. Because Triple J has now learned that Morrico does not accept the contract, the Settlement Agreement should be modified such that Morrico will not be awarded the sale of three (3) buses, nor any subsequent buses on the IDIQ contract and available funding therefor. Otherwise, Morrico could argue that GSA and Triple J are forcing a contract on Morrico without Morrico’s approval.

Triple J also requests that the Settlement Agreement be modified to provide the award of all buses to Triple J, on the basis that a multiple award may not be appropriate under the facts and circumstances surrounding this Settlement Agreement, particularly where it has been determined and Morrico’s buses would not comply with the specifications of the IFB and may place the schoolchildren of Guam at risk. See 2 GAR, Div. 4, § 3122(1) (“An incremental award may be used only when awards to more than one bidder or offeror for different amounts of the same item are necessary to obtain the total quantity or the required delivery.”); see *also* Procurement Primer, p. 169 (citing § 3122) (“To avoid the facilitation of collusion, multiple awards cannot be made when a single award can be made to meet the territory’s needs without sacrificing economy or service, nor for dividing business or settling low tie bids.”). Because Morrico will not be able to, and is apparently not willing, to provide buses under this IFB that will satisfy the IFB specification requirements, and because Triple J is ready, willing, and able to

provide all of the buses, Triple J submits that it is in the best interest of the Territory to modify the Settlement Agreement to provide for a total award of all of the buses to Triple J. See Specifications of IFB No. GSA-065-14, item 22 (“The Government reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type items and the vendor agrees to such modifications and additional awards”).

IV. Conclusion

Based on the foregoing, Triple J respectfully requests for the OPA to DENY Morrico’s Motion to Set Aside for lack of jurisdiction, and to GRANT Triple J’s Cross-Motion for Ratification and Affirmance of its contract with GSA in the best interests of the Territory.

Respectfully submitted this 1st day of December, 2014.

CABOT MANTANONA LLP
Attorneys for Appellant *Triple J*

By: 
MATTHEW S. KANE, ESQ.

12-01-14
CB



Office of the Attorney General
Leonardo M. Rapadas
Attorney General of Guam
Civil Division
590 S. Marine Corps Drive
Suite 706, ITC Building
Tamuning, Guam 96913 • USA
Tel. (671) 475-3324 Fax. (671) 472-2493
www.guamag.org

Attorneys for the Government of Guam

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PROCUREMENT APPEALS

DATE: 12/1/14
TIME: 1:40 AM PM BY: [Signature]
FILE NO OPA-PA: 14-009

CABOT MANTANONA LLP

Date: 12/1/14
Time: 2:04
Initials: CRG

IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of	)	Docket No. OPA-PA-14-009
)	
Triple J Enterprises, Inc.	)	OPPOSITION TO THE MOTION TO SET
	)	ASIDE ORDER DISMISSING APPEAL
Appellant.	)	WITH PREJUDICE
)	

The Government of Guam, Department of Administration, General Services Agency ("GSA") hereby submits its opposition to Morrico Equipment, L.L.C's ("Morrico") Motion to Set Aside the Order Dismissing the Appeal with Prejudice.

The Chief Procurement Officer has the authority to settle a protest of an aggrieved bidder. 5 G.C.A. § 5425(b). In this case, Triple J Enterprises, Inc. ("Triple J") filed a protest on G.S.A Bid No. 065-14. The protest was denied by GSA and Triple J filed an appeal with the Public Auditor. GSA and Triple J entered into a settlement agreement to resolve the protest. The settlement agreement was approved by the Public Auditor. The appeal was dismissed with prejudice.

DOOLEY ROBERT J. POWER LLP
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The Office of Public Accountability does not have jurisdiction to grant the relief requested by Morrico. Morrico is not an interested party in Triple J's protest and appeal on G.S.A. Bid No. 065-14 and therefore lacks standing to request relief in this case.

According to the Public Auditor's Rules for Procurement Appeals, an interested party "means an actual or prospective bidder, offeror, or contractor who appears to have a substantial and reasonable prospect of receiving an award if the Appeal is denied." 2 GAR § 12102(b).

Morrigo's bid was rejected for failure to meet an exterior rivet specification. Triple J's bid was also rejected for being non-responsive. GSA cancelled the procurement and notified Morrico and Triple J the IFB would be re-bid. Triple J appealed. Morrico did not receive notice of the appeal because their bid was rejected and the IFB was cancelled.

GSA and Triple J agreed to resolve the protest and entered into a settlement agreement. In the agreement, GSA agrees to award the sale of buses to Triple J and Morrico. The award is contingent on Triple J's schematics complying with the bid specifications. A notice to award will be issued thereafter to Morrico and Triple J. In the event, the schematics do not comply, no award will be issued and the bid will be cancelled.

Morrigo does not have a reasonable prospect of receiving an award in this procurement absent the settlement agreement which Morrico now seeks to set aside. Therefore, Morrico is not an interested party as defined in the rules. Since Morrico is not an interested party, the OPA does not have jurisdiction to grant Morrico's request for relief.

Although OPA may have implied or inherent power to rehear its final decision, such power is by no means unlimited. *Guam Public Safety v. Guam Civil Service Commission*, 1982 WL 30789 (D. Guam App. Div. Sept.8, 1982). Before the power of administrative reconsideration can be exercised, there must be good cause shown, it must be exercised

reasonably and the petition seeking its exercise must be made with reasonable diligence. *See In re Department of Agriculture v. Civil Service Commission (Rojas)*, 2007 Guam 21 (The record contained no showing of good cause, such as fraud, misconception of facts or law or mistake, that would support reconsideration. The exercise of reconsideration was not reasonable under the circumstances. There was no showing of reasonable diligence in seeking reconsideration, as the reconsideration motion was filed more than two years after the appeal was dismissed.) *Blas v. Guam Customs & Quarantine Agency*, 2000 Guam 12 (The court rejected the argument that there was good cause based on a misapprehension of facts and law because this contention was not supported by the record. It would be unreasonable to exercise reconsideration when doing so contradicted the record. The motion was not diligently made.) *Guam Public Safety v. Guam Civil Service Commission*, 1982 WL 30789 (D. Guam App. Div. Sept.8, 1982). (The court did not permit the Commission to rehear its decision on the basis of newly discovered evidence submitted more than nineteen months after its final determination would allow the Commission unlimited time within which to review or correct its final decisions.)

In this instance, OPA does not have jurisdiction to set aside the dismissal. As submitted above, Morrico does not have standing to bring such motion. Morrico argues it did not receive notice of the appeal. Morrico is not an interested party to the appeal requiring notice to Morrico.

Morrico also argues that OPA did not have jurisdiction over the purported settlement agreement. As cited above, GSA has the authority to settle a protest. The appeal was dismissed because GSA and Triple J agreed to resolve the protest. Since there was a resolution in the matter, the order to dismiss was warranted. The OPA's order is final. *See* 5 G.C.A. § 5425(f).

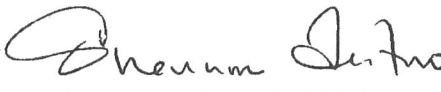
CONCLUSION

Morrico is not an interested party and therefore lacks standing to bring this motion. OPA does not have jurisdiction to grant Morrigo's relief as GSA is authorized to settle protests. For these reasons, the OPA should deny Morrigo's Motion to Set Aside Order Dismissing Appeal with Prejudice for Lack of Jurisdiction.

Respectfully submitted this 1st day of December, 2014.

OFFICE OF THE ATTORNEY GENERAL

Leonardo M. Rapadas, Attorney General

By: 

SHANNON J. TAITANO
Assistant Attorney General

12-01-14
QB

PCF/AG #: AG14.0904

DEADLINE: 12/1/2014

CASE #: OPA-PA-14-009 CASE NAME: In the Appeal of Triple J Enterprises, Inc.

TYPE OF DOCUMENT: 1) Opposition to the Motion to Set Aside Order Dismissing Appeal with Prejudice

FILE: SUPERIOR COURT OTHER OPA
 DISTRICT COURT

SERVE:	<u>1 Dooley Roberts</u>	<u>5</u>
	<u>2 Cabot Mantanona</u>	<u>6</u>
	<u>3</u>	<u>7</u>
	<u>4</u>	<u>8</u>

12-01-14 (SM)

SPECIAL INSTRUCTIONS: Thank you.

RETURN FILE COPY W/ACKNOWLEDGEMENT OF RECEIPT & SCAN
 RETURN FILE TO ATTORNEY

PREPARE DECLARATION OF SERVICE

ATTORNEY: Shannon J. Taitano

PREPARED: A. Munoz

DATE: 12/1/14 11:00 AM

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Eddie Baza Calvo
Governor

GSA

GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

Ray Tenorio
Lieutenant Governor

Benita A. Manglona
Director

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

John A.B. Pangelinan
Acting Deputy Director

December 1, 2014

Memorandum

Mr. Kevin Fowler
c.o Dooley Roberts & Fowler LLP
Suite 201, Orleans Pacific Plaza
865 South Marine Corps Drive
Tamuning, Guam 96911

Re: Extension for filing Procurement Record

Dear Mr. Fowler:

The General Services Agency requested and received permission from the Office of Public Accountability on Wednesday, November 26th, an extension for filing the procurement record until December 2, 2014. This is to inform you of the authorization for filing two (2) days later than previously stated.

Ret 14 12/1/14

1
CLAUDIA S. ACFALLE
Chief Procurement Officer

DOOLEY ROBERTS & FOWLER LLP
2014

[Signature]

COMMITTED TO EXCELLENCE

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

Ray Tenorio
Lieutenant Governor

Benita A. Manglona
Director

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

John A.B. Pangelinan
Acting Deputy Director

December 2, 2014

Memorandum

To: Office of Public Accountability
Fr: Chief Procurement Officer
Re: Conflicts Checklist for OPA-PA-14-011

Pursuant to your memorandum, the General Services Agency provides the following information:

Legal Counsel:	Shannon Taitano, AAG Office of the Attorney General
Procurement Officer	Anita Cruz, Buyer Supervisor General Services Agency
Board of Directors:	None
All GSA Offices Relative to this case:	Robert Kono, GSA Advisor General Services Agency
Any other procurement Official relevant to this Appeal	None

CLAUDIA S. ACFALLE

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BY:
DATE: 12/2/14
TIME: 3:45 AM PM



Marissa Leon Guerrero <marissa.leonguerrero@gsa.guam.gov>

Procurement Protest 2_November 21, 2014_Dooley Roberts & Fowler LLP representing Morrico Equipment, LLC [GSA ref: IFB No. GSA-065-14 School Bus (60 Passenger)]

1 message

Marissa Leon Guerrero <marissa.leonguerrero@gsa.guam.gov>

Tue, Dec 2, 2014 at 12:20 PM

To: staitano@guamag.org

Cc: Robert Kono <robert.kono@gsa.guam.gov>, Claudia Acfalle <claudia.acfalle@gsa.guam.gov>, Anita Cruz <anita.cruz@gsa.guam.gov>, Cathi Blas <cathi.blas@gsa.guam.gov>

Buenas Attorney Taitano,

Attached per your request:

Procurement Protest #2

Dated 11/21/2014

From: Dooley Roberts & Fowler LLP representing Morrico Equipment, LLC ("Morrico")
re: GSA-065-14 - School Bus (60 Passenger)

Please reply that you've received this message and the attached document.

Senseramente,

si Marissa

Marissa D. Leon Guerrero
Administrative Aide
General Services Agency
Department of Administration
Government of Guam
Tel: (671) 475-1715 / 07
Fax: (671) 472-4217



Procurement Protest 2_11 21 2014_GSA-065-14_Dooley Roberts & Fowler LLP-Attys at Law_Representing Morrico Equipment LLC.pdf
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PROCUREMENT APPEALS

DATE: 12/4/14

Appendix D: Hearing Request/Waiver Form 9:29 AM PM BY: Jh

PROCUREMENT APPEAL

FILE NO OPA-PA: 14-012

In the Appeal of)
)
)

HEARING REQUEST

Morrigo Equipment, LLC,)
)
)

Appellant.)
)
)
_____)

Docket No. OPA-PA 14-012

Please select one:

Pursuant to 2 GAR § 12108(a), the undersigned party does hereby request a hearing on the appeal stated above.

Pursuant to 2 GAR § 12108(a), the undersigned party does hereby waive his/her right to a hearing and is submitting the appeal stated above on record without a hearing.

Submitted this 4th day of December, 2014.

By: (Please select one)

APPELLANT

Chief Procurement Officer

Director of Public Works

Head of Purchasing Agency

GOVT OF GUAM
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2014 DEC -5 AM 8:58
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Richere Flores

DOOLEY ROBERTS & FOWLER LLP

By:

Kevin J. Fowler
Kevin J. Fowler, Attorneys for Appellant
Morrigo Equipment, LLC

Suite 401 DNA Building
238 Archbishop Flores St.
Hagåtña, Guam 96910



FAX

To:	Claudia Acfalle Chief Procurement Officer General Services Agency	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone:	(671) 475-1707	Pages:	6 (including cover page)
Fax:	(671) 475-1727	Date:	December 5, 2014
CC:	Kevin J. Fowler Dooley Roberts & Fowler LLP (Attorneys for Morrico Equipment, LLC)	Phone:	475-0390 x. 216
Phone:	(671) 646-1222	Fax:	472-7951
Fax:	(671) 646-1223		

Re: OPA-PA-14-012 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
Yuka Hechanova
Deputy Public Auditor
yhechanova@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CQFM
Public Auditor

December 5, 2014

Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
P.O. Box 884
Hagatna, Guam 96932

VIA FACSIMILE: (671) 472-1727

Re: Notice of Receipt of Appeal ~ OPA-PA-14-012

Dear Ms. Acfalle,

Please be advised that Morrico Equipment, LLC (Morrico) filed an appeal with the Office of Public Accountability (OPA) on December 4, 2014 regarding the General Services Agency's (GSA) response to Morrico's protest relative to Invitation for Bid No.: GSA-065-14 for School Buses. OPA has assigned this appeal case number OPA-PA-14-011.

Immediate action is required of GSA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at www.guamopa.org. The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Monday, December 15, 2014**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Monday, December 22, 2014**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to Morrico. OPA respectfully asks that GSA provide one original

and two copies of the procurement record as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Yuka Hechanova at 475-0390 ext. 210, or yhechanova@guamopa.org, should you have any questions regarding this notice.

Sincerely,



Yuka Hechanova, CPA, CIA, CGFM, CGAP, CGMA
Deputy Public Auditor

Enclosure: First Three Pages of Notice of Appeal – OPA-PA-14-012

Cc: Dooley, Roberts & Fowler LLP, Attorneys for Morrico.

Kevin J. Fowler
 DOOLEY ROBERTS & FOWLER LLP
 865 South Marine Corps Drive, Suite 201
 Tamuning, Guam 96913
 Telephone No. (671) 646-1222
 Facsimile No. (671) 646-1223
 E-mail: fowler@guamlawoffice.com

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DATE: 12/14/14
 TIME: 4:35 AM PM BY: [Signature]
 FILE NO OPA-PA: 14-012

Attorneys for Appellant
 Morrico Equipment, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of)
)
 MORRICO EQUIPMENT, LLC,)
)
 Appellant.)
 _____)

**NOTICE OF PROCUREMENT
 APPEAL**

Docket No. OPA-PA 14-012

Appellant Information:

Morrigo Equipment, LLC ("Morrigo")
 197 Ypao Road
 Tamuning, Guam 96931

Tel: 649-1946
 Fax: 649-1947

Appeal Information:

- A) General Services Agency ("GSA").
- B) Invitation for Bid No. GSA065-14; a procurement solicitation for school buses.
- C) Decision being appealed is the GSA's December 1, 2014, decision by which it refused to render a decision on Morrigo's November 21, 2014, protest.
- D) Appeal is made from a decision on protest of method, solicitation or award.
- E) Names of competing bidders: Triple J Enterprises, Inc.

ORIGINAL

Form and Filing:

1. On or about July 1, 2014, the GSA let the subject Invitation for Bid ("IFB"), for school buses.
2. Morrico submitted a bid in response to the IFB and a bid opening was conducted on August 12, 2014. *See, Exhibit A.*
3. On September 9, 2014, GSA sent Morrico a bid status advising that the Morrico bid was rejected due to nonconformity with an exterior rivet specification. The GSA further advised that the IFB would be re-bid. *See, Exhibit B.*
4. On October 29, 2014, Triple J Enterprises, Inc. ("Triple J"), filed an appeal to the Office of Public Accountability ("OPA"), with respect to the GSA's September 26, 2014, denial of Triple J's previously filed protest. *See, In the Matter of Appeal of Triple J Enterprises, Inc., OPA-PA-14-009.*
5. On November 10, 2014, Morrico learned that Triple J, the GSA and the Guam Attorney General's Office ("AGO"), had entered into a written settlement agreement to resolve Triple J's appeal in OPA-PA-14-009. The settlement agreement was submitted to the OPA on November 7, 2014, and the OPA signed the settlement agreement on November 10th. The settlement agreement provided that the GSA would award nine (9) buses to Triple J and that the GSA would award three (3) buses to Morrico. The settlement agreement further provided that if Morrico protested the settlement agreement, then the GSA would award all buses to Triple J.
6. Morrico was not a party to the settlement agreement, it did not sign the settlement agreement and it does not approve of the settlement agreement.
7. On November 10, 2014, Morrico, through counsel, filed a protest with the GSA with respect to its intent to award a contract to Triple J for the purchase of buses under the IFB. Morrico's protest is attached hereto as **Exhibit C**.
8. The GSA denied Morrico's protest in a letter dated November 12, 2014, and received by Morrico's counsel on November 13, 2014. *See, Exhibit D.*
9. On November 18, 2014, Morrico filed an appeal with the OPA with respect to the GSA's November 12, 2014, protest denial. *See, In The Procurement Appeal of Morrico Equipment, LLC, OPA-PA-14-011.*
10. On November 21, 2014, Morrico filed a second protest with the GSA regarding its intent to award a contract to Triple J. Morrico's second protest is attached hereto as **Exhibit E** and is incorporated herein by reference.
11. On December 1, 2014, the GSA responded to Morrico's November 21, 2014, second protest. The GSA refused to render a decision on the merits of the second protest because it had

stayed the procurement following Morrico's first protest filed on November 10, 2014. The GSA's December 1, 2014, letter is attached hereto as **Exhibit F**.

12. In *In the Appeal of Pacific Data Systems*, OPA-PA-12-012, the OPA held that even though there was a pending appeal of a procurement protest decision, the GSA must still render a decision on a second protest filed by the same bidder with respect to that same solicitation. Further, the OPA held that the GSA must also render a decision on any other protests filed by other bidders with respect to that same solicitation.

13. Morrico requests that the OPA rule that the GSA must render a decision on Morrico's November 21, 2014, protest.

15. Morrico has attached all supporting documents as exhibits hereto.

Declaration regarding court action:

Morrigo confirms that an action in court has not been commenced.

Dated this 3rd day of December, 2014.

DOOLEY ROBERTS & FOWLER LLP

By:



KEVIN J. FOWLER
Attorneys for Appellant
Morrico Equipment, LLC

VERIFICATION

I, Torgun Smith, Executive Vice President for Appellant Morrico, hereby declare under penalty of perjury under the laws of Guam that I have read the foregoing Notice of Procurement Appeal and that it is true and correct of my own knowledge, except as to those matters alleged upon information and belief and as to those matters, I believe them to be true.

Dated this 3rd day of December, 2014.



TORGUN SMITH



Office of the Attorney General
 Leonardo M. Rapadas
 Attorney General of Guam
 Civil Division
 590 S. Marine Corps Drive
 Suite 706, ITC Building
 Tamuning, Guam 96913 • USA
 (671) 475-3324 • (671) 472-2493 (Fax)
 www.guamag.org

Attorneys for the Government of Guam

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of	)	Docket No. OPA-PA-14-012
)	
MORRICO EQUIPMENT, LLC,	)	STIPULATION
)	
Appellant.)	

Morrigo Equipment, LLC and General Services Agency, through their counsel, stipulate that the procurement record and agency report in OPA-PA-14-011 are the same procurement record and agency report in this appeal and therefore need only be supplemented with any new information or documents added to the record since, December 1, 2014, the date of submission of the procurement record to the Office of Public Accountability in OPA-14-011.

IT IS SO STIPULATED.

OFFICE OF THE ATTORNEY GENERAL

DOOLEY ROBERTS & FOWLER, LLP

SHANNON J. TAITANO
 Attorney for General Services Agency
 Dated: 10 DEC 14

KEVIN J. FOWLER
 Attorney for Morrigo Equipment, LLC
 Dated: 12/10/14

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DATE: 12/11/14
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FILE NO OPA-PA: 14-012

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