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A PROFESSÍONAL CORPORATION 238 ARCHBISHOP FLORES ST STE 1008 HAGÅTÑA GU 96910-5205 TELEPHONE: (671) 477-7857

Attorneys for Appellant Mid Pac Far East

## RECEIVED

OFFICE OF PUBLIC ACCOUNTABILITY PROCUREMENT APPEALS

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FILE NO OPA-	-PA:	4-011	

## IN THE OFFICE OF PUBLIC ACCOUNTABILITY PROCUREMENT APPEAL

In the Appeal of	)	Docket No. OPA PA-15-011
MID PAC FAR EAST,	)	
Appellant.	)	APPELLANT'S COMMENT TO AGENCY REPORT

On October 21, 2015, Mid Pac Far East ("MPFE") received a copy of the General Services Agency ("GSA") agency report, identified in the caption as an "Answer". On October 19, 2015, GSA filed a document with the OPA titled as an "Agency Report." No copy of this document was provided to MPFE. Only a copy of the "Tablet of Contents" of the October 19, 2015 filing is available on the website for the Office of the Public Auditor, meaning that MPFE cannot review the contents of that filing.

In an abundance of caution, to meet the ten-day filing deadline and ensure that the OPA is able to consider its position, MPFE hereby submits the following comments based on the "Answer" submitted by GSA. However, MPFE maintains that it has not received a copy of the document labeled as the "Agency Report" in the October 19, 2015 GSA filing at the OPA.

## A. The Invitation for Bid Cannot Override or Sidestep Guam Procurement Regulations

The basis of MPFE's protest is that a mistake in the form of a typographical error occurred in the transcription of the unit price in its bid and that the mistake as well as the

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238 ARCHBISHOP FLORES ST STE 1008 HAGÅTÑA GU 96910-5205

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intended bid was evident on the face of the bid. In response, GSA has argued that the unit price must govern, regardless of mistakes, because item 2(c), of the bid instructions, located on page 26, states that "[i]n the event of discrepancies between a unit price and extended price, the unit price will be presumed to be correct."

GSA's argument fails to account for the possibility that the unit price would be subject to a mistake. In that event, Guam's procurement regulations governing mistakes still governs. There is no exception in the statute or the regulations that permits the GSA to ignore portions of the Guam procurement law or write out portions of the law through the instructions segment of an invitation for bid. Thus, while the GSA may have included instructions stating that the unit price would govern in the event of a discrepancy of between the unit price and the extended price, a mistake occurring in the unit price must still be corrected if the requirements of 2 GAR Division 4 Section 3109(m)(4)(C) are met.

## В. Guam Procurement Law Permits the Correction of Mistakes

Guam procurement regulation 2 GAR Division 4 Section 3109(m)(4)(C) states that:

(C) Mistakes where intended correct bid is evident. If the mistake and the intended correct bid is clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transportation errors, and arithmetical errors.

Therefore, in order for an agency or the OPA to recognize and correct a mistake, (1) the mistake must be clearly evident on the face of the bid document and (2) the intended correct bid must be clearly evident on the face of the bid document. One example of a mistake cited by the rule is a typographical error.

## A Mistake in the Unit Price is Clearly Evident on the Face of the MPFE Bid C. Submittal

There are several indications on the face of the MPFE bid submittal that the unit price

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for line item 79.1 was the subject of a typographical error.

First, in every instance in the MPFE bid document where a unit price or price extension is noted to be a whole dollar figure, the entry is marked with zeroes following a decimal. For example, the unit priced for line item 82.1, line item 86.1, and line item 88.1 are marked as "\$6.00", "\$700.00", and "455.00", respectively. Line item 79.1 stands alone as the only line item unit price entry that defies the format used in the rest of the line item unit price entries. The unit price for line item 79.1 is entered as "\$537.", with the decimal at the end of the figure and no zeroes following the decimal. This discrepancy alone should have alerted GSA to the fact that a mistake in the form of a typographical error was made.

Second, the extended price for line item 79.1 in the MPFE bid submittal reflects the unit price of \$5.37 multiplied by the 50 units requested by the GSA. The extended price is listed as \$268.50, not the exorbitant price of \$26,850.00 that OPA calculated and used to replace MPFE's extended price. This discrepancy between the unit price and the extended price should have alerted GSA to the fact that a mistake in the form of a typographical error was made.

Third, Morrico, the only other bidder on line item 79.1, included a unit price of 9.04 in its bid submittal. The fact that the unit price, as it was understood by GSA to be \$537.00, was nearly sixty times the price offered by the only other bidder should have alerted GSA to the fact that a mistake in the form of a typographical error was made.

Fourth, the fact that including the recalculated extended price for line item 79.1 in the MPFE bid, as GSA did, resulted in a total bid price that was \$26,581.50 greater than that with the correct extended price thereby rendering the bid bond submitted by MPFE insufficient, should have alerted GSA to the fact that a mistake in the form of a typographical error was made. Oddly, GSA appears to be taking the position that it is more plausible MPFE erred by

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submitting a severely insufficient bid bond rather than that it erred by committing a typographical error in the unit price.

Lastly, the mistake was clearly evident given that common sense would dictate that one foot of heater hose for a bus at a 3/4 inch diameter could not possibly cost over 100 times that of one foot of heater hose for a bus at a 5/8 inch diameter. Line item 80.1 requests heater hose at a 5/8 inch diameter and the unit price included in the MPFE bid was \$5.35. The fact that line item 79.1 requested nearly the identical product as line item 80.1 and the unit price for 79.1 appeared to GSA to be listed at over 100 times the unit price of line item 80.1 should have alerted GSA to the fact that a mistake in the form of a typographical error had been made.

Instead of taking all of the facts noted about to consider than the unit price for line item 79.1 was the subject of a typographical error, GSA went out of its way to exacerbate the error by calculating an absurdly disproportionate extended price, using that inflated price per roll to recalculate the total price of the bid, the recalculating a new bid bond amount, and declaring the bid bond insufficient, thus disqualifying the entire bid submitted by MPFE.

Rather than recognizing the clear mistake for what it was, GSA bent over backwards to disqualify MPFE's bid in its entirety. As described below, GSA's decision, if sustained, will cost the taxpayers of Guam \$118,746.41.

## D. The Intended Unit Price is Clearly Evident on the Face of the MPFE Bid Submittal

As noted above, the unit price for line item 79.1 was simply entered with a misplaced decimal. The fact that the unit price for line item 79.1 did not follow the same format as the rest of the unit prices in the MPFE bid submittal should have alerted GSA to the fact that a mistake occurred and that the decimal should have been moved two places to the left to result in a unit price of \$5.37. The correction could have also been checked by calculating backwards from the extended price to confirm that the correct unit price was \$5.37 and that the decimal

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had merely been moved as the result of a typographical error. No extraneous information would have been needed to find the correct bid number. Therefore, the correct price was clearly evident on the face of the bid document.

## E. The GSA's Decision to Reject MPFE's Bid in its Entirety by Ignoring the Obvious Typographical Error will Cost the Taxpayers of Guam \$118,746.41

GSA's decision runs afoul of 5 G.C.A. § 5001(b)(5), which provides that one of the underlying principles and policies of the Guam Procurement Law is "to provide increased economy in territorial activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Territory." Given that MPFE's bid has been rejected in its entirety, all of the line items for which MPFE was the lowest bidder will now go to the next lowest bidders.

Attached as Exhibit "A", is a spreadsheet in which the difference in the total price of GSA-093-15 is calculated if the GSA's decision is upheld and the MPFE bid is disqualified. As calculated, if the OPA upholds GSA's decision to ignore the obvious typographical error and go out of its way to disqualify MPFE's bid in its entirety will cost the taxpayers of Guam \$118,746.41.

**DATED** this 29th day of October, 2015.

BLAIR STERLING JOHNSON & MARTINEZ A PROFESSIONAL CORPORATION

R. MARSIL JOHNSON

Attorneys for Appellant Mid Pac Far East

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# BLAIR STERLING JOHNSON & MARTINEZ

## **CERTIFICATE OF SERVICE**

I, R. Marsil Johnson, do hereby certify that on the 29th day of October 2015, I caused a copy of the APPELLANT'S COMMENT TO AGENCY REPORT to be served upon the following, via hand delivery:

**Purchasing Agency:** 

Nicolas Toft

Assistant Attorney General Civil Litigation Division 590 S. Marine Corps. Dr. Tamuning, Guam 96913

**DATED** this 29th day of October, 2015.

BLAIR STERLING JOHNSON & MARTINEZ
A PROFESSIONAL CORPORATION

R. MARSIL JOHNSON

Attorneys Appellant Mid Pac Far East

## EXHIBIT "A"

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125.1 HORN ASSY (HIGH)	2.00	18.56	92.80	24,90	124.50			,	•	31.70			31
126.1 HORN ASSY (LOW)	2.00	18.56	92.80	24.90	124.50		,	•	1	31.70			31
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MARKER LIGHT, AMBER	MARKER LIGTH CAT-EYE RED ASSY	MARKER LIGH	OIL FILTER	OIL FILIER	BEVERSE LIG	SIDE VIEW MIRROR ASSY	TIE ROD END	TIE ROD END	TURBO BOOT	TURN SIGNAL	I DHN SIGNAL	UNLOADING LIGHTS (RED) ASSY	CINECADING L	CI ID DING	CERT HING CRANK ABM WIPER MOTOR	SEAL FRONT CRANKSHAF	IDLER PULLEY ASSY, DRIVE BELT	TENSIONER, DRIVE BE	DOOR CYLINDER ASSY. PNEUMATIC	DIRECTIONAL SWITCH, PNEUMATIC DOOR	WAIEH PUMP	FEDONT SHOCK ABSORBER	REAR SHOCK	FRONT BRAKE	REAR BRAKE CHAMBER	DOOR ENTRY	DOOR ENTRA	LOWER RADIATOR	FRONT BRAKE	REAR BRAKE	TREADLE VAL	AIR BRAKE DF	DOOR SWITCH	WIFER SWITCH FADDL	DOOR LATCH LOCK	AIR COMPRES	BACK UP ALARM	BACK-UP LIGHT ASSY W/ BULB BRAKE LIGHT ASSY ( 4 INCH)	SWITCH DOOR PADDLE	DOOR BUZZER ALARM	DIMMER SWITCH ASS'	EMERGENCY	FLASHER 8 WAY OR ARIAL FLASHER	FLASHER (TU)	FUEL FILTER PRIMARY	FUEL FILTER SECONDARY	FUEL FILETR	UPPER RADIA	UPPER PIPE	WIPER ARM A	WIPER BLADES 28 INCH	SELT FAN	SWITCH ROCK	RADIATOR CA	GASKET VALV	GASKET GEAR MOUNT	AIR GOVERNO	CIRCUIT BRE	
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294.50	895.05	07 050	023:20		90.85	222.20	258.65	81.80	111.50	100 75	109:73	06.74		00 026	2000	224.16		1	1	6,181.15	1,229.24	680.22	1,405.60	70.00	76.96	-	44.82	44.82	72.50	72.50	1		51.00	1	96.28	163.60	162.10	35.68	35.68	224.50	224.50	66.65	110.05	, ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	00.722	267 30	505:30	1,053.80	1	164.10	2,710.00	796.40	106 73		21.73	67.80	202.20	1,958.08	0/32/0	1	78.40	1	165.00
294.50	895.05	22/7785	219 46	-310.40	90.85	222.20	258.65	81.80	111.60	29.90	109.75	47.90	-3300.00	920.00	-60.00	22416	-82 52	-8.04	-87.30	6181.15	1229.24	680.22	1405.60	70.00	76.96	-58.65	44.82	44.82	72.50	72.50	-975.00	-1141.60	51.00	-112.36	96.28	163.60	70.05	35 68	35.68	224.50	224.50	66.65	110.05	-920.00	227.00	-384.04	509.64	1053.80	-46.00	164.10	2710.00	796.40	1077.66	-3.00	21.73	67.80	202.20	1958.08	2000.00	-567.60	78.40	-678.40	165.00
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650.00	9,500.00	5,895.00	900.00	4,152.00	1,650.00	437.10	463.85	170.00	274.20	410.00	1,945.00	285.00	3,300.00	1,451.00	1 1 1 0 00	500.00	900.00	1 040 00	768 00	375.00	3.240.00	1,800.00	2,900.00	232.00	184.00	69.00	260.00	260.00	270.00	270.00	2,457.40	2,600.00	225.00	1,300.00	320.00	120.00	1/1.10	1,706.00	240.00	138.00	138.00	190.25	220.55	920.00	1,250.00	3,412.00	00.090,U	729.20	2,596.00	2,511.20	800.00	393.60	2,460.00	310.00	405.00	143.20	1,285.60	2,029.04	1,248.00	2,000.00	452.00	678.40	729.20
13.00	1,900.00	1,179.00	45.00	3,576.00	1 650 00	87.42	92.77	8.50	13.71	41.00	389.00	28.50	7,457,00	1,451.00	200 22	00.00	225 63	260.03	128.00	75.00	810.00	300.00	290.00	29.00	23.00	00.69	130.00	130.00	135.00	135.00	122.87	130.00	45.00	650.00	160.00	00.09	34.22	853.00	120.00	69.00	69.00	38.05	44.11	230.00	125.00	853.00	109.00	36.46	259.60	251.12	800.00	39.36	410.00	20.00	405.00	7.16	64.28	253.63	156.00	14.19	11.30	16.96	36.46
20.00	2.00	5.00	20.00	2.00	1.00	5.00	2.00	20.00	20.00	10.00	5.00	10.00	7.00	T.00	20.00	20.07	00.00	4.00	00.4	5.00	4.00	00.9	10.00	8.00	8.00	1.00	2.00	2.00	2.00	2.00	20.00	20.00	2.00	2.00	2.00	2.00	5.00	2.00	2.00	2.00	2.00	2.00	2.00	4.00	10.00	4.00	10.00	20.00	10.00	10.00	1.00	10.00	0.00	9.00	100	20.00	20.00	8.00	8.00	70 00 00 0V	40.00	40.00	20.00
226.1 TRANSMISSION FILTER EXTERNAL				230.1 HADIATOH ASSEMBLY W/ CAP	232.1 RADIATOR ASSEMBLI W. CAP	233.1 TIE ROD END. LEFT	234.1 TIE ROD END, RIGHT		_			241.1 CAP HUB	1	1	247.1 BRANE SHOES, TRONI	Ţ	Ţ		. _	_ _	255.1 FAN CLITCH ASSEMBLY	_	_	_	T	T	T	T	T	264.1 RIGHT REAR LEAF SPRING SHOCK MOUNT BRACKET					269.1 FRONT TIMING COVER ASSEMBLY W/ GASKET		_	272.1 ALTERNATOR ASSEMBLY WITH PULLEY	_ _	_   _	- -	_	278.1 REAR HUB INNER AXLE SEAL MOUNT		1	1	280.1 TENSIONER BELT		283.1 CIRCUIT BOARD #1	_	285.1 FUEL PUMP ASSEMBLY INJECTOR		297.1 ENGINE MOUNT ASSY		299.1 LOW COOLANT SENSOR	- -	-	_	-1	305.1 AIR COMPRESSOR ASSEMBLY 306.1 EMEDGENINY SWITCH WINDOW	305.1 EMERGENCY SWITCH WINDOW SWITCH	- -	309.1 DRIVE BELT

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