



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

December 9, 2015

David L. Manning  
Head of Purchasing Agency  
Guam Solid Waste Authority  
Under the Management of Federal Receiver  
Gershman, Brickner, & Bratton, Inc.  
542 North Marine Corps Drive  
Tamuning, Guam 96911

**VIA FACSIMILE: (671) 649-3777**

Re: Notice of Receipt of Appeal – OPA-PA-15-014

Dear Mr. Manning,

Please be advised that Morrico Equipment, LLC (“Morrico”) filed an appeal with the Office of Public Accountability (OPA) on December 7, 2015 regarding the Guam Solid Waste Authority’s response to Morrico’s protest relative to Invitation for Bid No.: GSWA004-15; a procurement solicitation for rear loader refuse packer bodies . OPA has assigned this appeal case number OPA-PA-15-014.

Immediate action is required of GSWA 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.opaguam.org](http://www.opaguam.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 **Wednesday, December 16, 2015**, 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 **Wednesday, December 23, 2015**, 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 GSWA 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 Llewelyn Terlaje at 475-0390 ext. 211, or [lterlaje@guamopa.org](mailto:lterlaje@guamopa.org), should you have any questions regarding this notice.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Terlaje', with a small '1' written above the end of the signature.

Llewelyn Terlaje  
Audit Supervisor

Enclosure: First Three Pages of Notice of Appeal – OPA-PA-15-014

Cc: Kevin J. Fowler, Attorneys for Morrico Equipment, LLC

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](mailto:fowler@guamlawoffice.com)

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
DATE: 12/7/15  
TIME: 4:20  AM  PM BY: AG  
FILE NO OPA-PA: 15-014

Attorneys for Appellant  
Morrigo Equipment, LLC

**THE OFFICE OF PUBLIC ACCOUNTABILITY**

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

**NOTICE OF PROCUREMENT  
APPEAL**

Docket No. OPA-PA \_\_\_\_\_

**Appellant Information:**

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

Tel: 649-1946  
Fax: 649-1947

**Appeal Information:**

- A) Guam Solid Waste Authority ("GSWA"), Under the Management of Federal Receiver, Gershman, Brickner & Bratton, Inc.
- B) Invitation for Bid No. GSWA004-15; a procurement solicitation for rear loader refuse packer bodies.
- C) Decision being appealed is the GSWA Denial of Procurement Protest, dated November 22, 2014, and received by Morrigo's counsel on November 23, 2015.
- D) Appeal is made from a decision on protest of method, solicitation or award.
- E) Names of competing bidders:  
  
Far East Equipment Company, LLC ("Far East").

ORIGINAL

**Form and Filing:**

1. On or about August 18, 2015, the GSWA let the subject Invitation for Bid (“IFB”), for rear loader refuse packer bodies. A copy of the pertinent IFB specifications is attached hereto as **Exhibit A**.

On September 14, 2015, Morrigo submitted its bid on the IFB. *See, Exhibit B*. The GSWA conducted a bid opening on that same date. The only other bidder on the IFB was Far East. The GSWA Abstract of Bids for Far East illustrated that it failed to submit the descriptive literature required by the IFB. *See, Exhibit C*. The GSWA Abstract of Bids for Morrigo’s bid is attached as **Exhibit D**.

On September 24, 2015, Morrigo received a document titled “Bid Status”, that informed Morrigo that its bid was rejected for failing to meet the delivery requirement in the IFB and that the IFB would be re-bid. The Bid Status is attached hereto as **Exhibit E**.

On September 28, 2015, Morrigo filed its protest with respect to the GSWA’s rejection of its bid. *See, Exhibit F*. Morrigo based its protest on the fact that the GSWA could not reject Morrigo’s bid for failure to meet a ninety (90) day delivery specification, without otherwise complying with 5 GCA § 5010. Section 5010 provides that “[a]ll procurements of supplies and services shall, where possible, be made sufficiently in advance of need for delivery or performance to promote maximum competition and good management of resources.” That section further provides that “[e]xcept in emergency situations, lower price bids are generally preferable to shorten delivery or performance bids. Delivery time may be considered as a factor in making an award to a responsive bidder *only if* his average delivery time bid is at least ten percent (10%) shorter than the average delivery time bid of a lower price responsive bidder and if the price offered by the bidder offering the faster delivery or performance does not exceed one hundred five percent (105%) of the lower price bidder.” Given that Far East’s bid was rejected due to not providing descriptive literature, there was no delivery time/price comparison that the GSWA could have conducted under 5 GCA § 5010. Accordingly, the GSWA should have awarded the bid to Morrigo.

In a letter dated November 22, 2015, but received by Morrigo’s counsel on November 23, 2015, the GSWA denied Morrigo’s protest. *See, Exhibit G*. The only explanation given by the GSWA for the denial was that “your protest is untimely.” The GSWA also stated that Morrigo’s protest “is also moot as GSWA is cancelling IFB GSWA004-15.” However, given the automatic stay under 5 GCA § 5425(g), any notice of cancellation would be void.

2. Morrigo requests that the Office of Public Auditor (“OPA”) rule that the GSWA’s denial of Morrigo’s protest was unreasonable, arbitrary, capricious and an abuse of discretion.

3. Morrigo has attached all supporting documents as exhibits hereto.

*In the Procurement Appeal of  
Morrico Equipment, LLC  
Notice of Procurement Appeal*

**Declaration regarding court action:**

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

Dated this 7<sup>th</sup> day of December, 2015.

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 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 7<sup>th</sup> day of December, 2015.

  
\_\_\_\_\_  
**TORGUN SMITH**

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



# FAX

<b>To:</b>	<b>David L. Manning</b> <b>Head of Purchasing Agency</b> <b>Guam Solid Waste Authority</b> Under the Management of Federal Receiver Gershman, Brickner, & Bratton, Inc. 542 North Marine Corps Drive Tamuning, Guam 96913	<b>From:</b>	<b>Doris Flores Brooks</b> <b>Guam Public Auditor</b> Office of Public Accountability
<b>Phone:</b> <b>Fax:</b>	(671) 646-4379 x 201 or 212 (671) 649-3777	<b>Pages:</b>	6 (including cover page)
<b>CC:</b>	<b>Kevin J. Fowler</b> <b>(Attorneys for Morrigo Equipment, LLC)</b>	<b>Date:</b>	December 9, 2015
<b>Phone:</b> <b>Fax:</b>	(671) 646-1222 (671) 646-1223	<b>Phone:</b> <b>Fax:</b>	475-0390 x. 203 472-7951

**Re:** OPA-PA-15-014 Notice of Receipt of Appeal

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Thank you,  
Jerrick Hernandez  
Auditor  
[jhernandez@guamopa.org](mailto:jhernandez@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.

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002		12:33PM	6461223	0:01:04	6	MEMORY OK	SG3 5212
TOTAL				0:02:08	12		

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<b>CC:</b>	<b>Kevin J. Fowler</b> (Attorneys for Morrico Equipment, LLC)	<b>Date:</b>	December 9, 2015
<b>Phone:</b> <b>Fax:</b>	(671) 646-1222 (671) 646-1223	<b>Phone:</b> <b>Fax:</b>	475-0390 x. 203 472-7951

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Thank you,

Jerrick Hernandez

Auditor

[jhernandez@guamopa.org](mailto:jhernandez@guamopa.org)