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TRANSMITTAL

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CC:	Mr. Joseph C. Razzano, Esq. Mr. Joshua D. Walsh, Esq. Attorney for Appellant Morrico Equipment, LLC Razano Walsh & Torres, P.C. 139 Murraby Blvd. Hagåtña, Guam 96910 Phone: (671) 989-3009 Email: jrazzano@rwtguam.com ; jdwalsh@rwtguam.com	Date:	October 21, 2024
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Re: OPA-PA-24-002 Decision and Order RE Purchasing Agency’s Motion to Dismiss

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com



**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE MATTER OF

**Morrigo Equipment, LLC,
Appellant.**

And

**Port Authority of Guam,
Purchasing Agency.**

Docket OPA PA-24-002

**DECISION AND ORDER RE
PURCHASING AGENCY'S MOTION
TO DISMISS**

This matter came before the Office of Public Accountability on September 23, 2024, pursuant to the Purchasing Agency Port Authority of Guam's (Hereafter Referred to as "PAG") Motion to Dismiss. The Appellant Morrigo Equipment, LLC (Hereafter Referred to as "MORRICO") filed their Opposition to the Motion to Dismiss on September 30, 2024. A Reply to the Opposition was filed by the Purchasing Agency on October 7, 2024. A Hearing on the Motion to Dismiss was held on October 9, 2024 via Zoom Meeting, where their respective attorneys represented the Parties.

ANALYSIS

In its Motion to Dismiss, PAG argues that OPA lacks jurisdiction to hear this appeal because MORRICO did not submit its protest within the fourteen (14) day limit of when they knew or should have known the issues. PAG cites May 8, 2024, when bids were opened, as the date MORRICO was made aware of the issues that are the basis of their protest. PAG cites

1 MORRICO's protest is based on complaints regarding the Federal Contracts Corporation's
2 ("FCC") bid not including 1.) a bid bond and forms; 2.) business licensing; 3.) a Special
3 Reminder form; and 4.) warranty/sales items. All of the bids were opened on May 8, 2024,
4 including FCC's bid. PAG noted FCC's price quote was announced, and the full contents of its
5 bid, including all documents submitted and not submitted, were made known and were
6 available to MORRICO on May 8, 2024.

8 Patrick Chargualaf, representing MORRICO, was present at the bid opening and
9 announcement, including announcement of all included forms and terms. A Bid Abstract
10 showing PAG's acceptance of FCC's bid price for evaluation, without bid bond, business
11 license, and the Special Reminders form, was prepared during the same bid opening, with Mr.
12 Chargualaf present. The bids were evaluated, and on May 20, 2024, Notice of Award
13 announcing FCC as the awarded contractor was issued to MORRICO and FCC.

16 MORRICO argues that the date of when they knew or should have known of the issues
17 for their grounds to protest as the May 20, 2024 Notice of Award (to FCC), as this was the date
18 they learned of PAG's intent to select for award an unlicensed company that had submitted a
19 non-responsive bid for consideration.

21 MORRICO filed its protest letter relative to the issues regarding FCC's bid on June 3,
22 2024, with a "Supplemental Bid Protest" filed on June 20, 2024. On July 31, 2024, PAG issued
23 a Decision addressing the June 3, 2024 protest letter and the June 20, 2024 "Supplemental Bid
24 Protest".

26 Under *DFS Guam L.P. v. The A.B. Won Pat International Airport Authority*,
27 MORRICO should have been able to file a protest "when alleged misconduct forms the basis of
28 a procurement protest, the time runs from the date on which the protesting party first learned of

1 the purported misconduct.” Id. ¶ 89. A protest filed more than 14 days after the disappointed
2 offeror or bidder had notice of the grounds for the protest is barred as untimely. This is true
3 “even if no contract has yet been awarded, even if the protest was filed within 14 days of the
4 agency’s selection of bidders or offerors, and even if the protestant did not subjectively
5 understand or appreciate the ground of protest.” Id. ¶ 87
6

7 In line with the Guam Supreme Court’s opinion and the decision for OPA-PA-21-001,
8 for this appeal to be properly before the Public Auditor, the Appellant MORRICO must have
9 filed its protest no later than fourteen days after it became aware alleged issues with FCC’s bid
10 and PAG was still considering it for the award. At the bid opening on May 8, 2024, MORRICO
11 was aware that FCC had the lowest bid amount and was in consideration of being awarded by
12 PAG.
13

14 In addition, the Public Auditor noted during the Motion Hearing that in the second
15 invitation for bid (issued on April 23, 2024), PAG had a section that indicated it was possible
16 for PAG to use a federal contractor. Specifically, General terms and conditions Page 25 of 51,
17 Number 48 Federal GSA Schedules was checked, and stated:
18

19 “This IFB is federally funded under MARAD FY 2022 American Marine
20 Highway (AMH) Grant No.:693JF72340007. The Port Authority of Guam is
21 accepting Federal GSA pricing inclusive with shipping cost to Guam. If the bid
22 pricing existing on the Federal GSA website from a qualified vendor for
23 qualifying items on the date of opening of the bids, plus the confirmed price of
24 shipping cots to Guam, confirmed after the opening of bids, is the lowest price,
25 then the contract will be awarded to that vendor.”
26

(PR Tab 2a)

27 This meant that all bidders were already put on notice on April 23, 2024, that it was
28 possible for PAG to award a vendor from Federal GSA. The Public Auditor noted that when
PAG opened the bids on May 8, 2024, MORRICO should have known that PAG would
consider a federal contractor. When MORRICO’s representative saw that FCC submitted a bid,

1 and it did not have the license and all the things that were not checked off, MORRICO's
2 representative should have said something. Therefore, the Public Auditor finds that the date of
3 when MORRICO "knew of should have known" to be May 8, 2024. Fourteen days after May 8,
4 2024, would have been May 22, 2024. However, MORRICO only filed its letter of protest on
5 June 3, 2024, after it received the Notice of Award (to FCC) on May 20, 2024. The Public
6 Auditor finds that MORRICO's protest was therefore untimely.
7

8 **CONCLUSION**

9 The Public Auditor of Guam, having reviewed the documents on file in this case and
10 being further familiar with the record and pleadings herein, GRANTS PAG's Motion to
11 Dismiss for lack of subject matter jurisdiction.
12

13 All other issues set forth in the PAG's motion will not be addressed. All filing deadlines
14 set forth in the Scheduling Order of September 20, 2024 are VACATED.
15

16 This is the final administrative decision. The Parties are hereby informed of their right
17 to appeal this Decision to the Superior Court of Guam, in accordance with Subarticle D of
18 Article 9, of 5 GCA § 5481(a) within fourteen (14) days after receipt of a Final Administration
19 Decision..
20

21 A copy of this Decision shall be provided to the parties and their respective attorneys, in
22 accordance with 5 GCA § 5702, and shall be made available for review on the OPA website at
23 www.opaguam.com.
24

25 **SO ORDERED** this 21st day of October, 2024 by:

26 

27 _____
28 **Benjamin J.F. Cruz**
Public Auditor of Guam



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-24-002 Decision and Order RE Purchasing Agency's Motion to Dismiss

Jerrick Hernandez <jhernandez@guamopa.com>

Mon, Oct 21, 2024 at 1:01 PM

To: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Joseph C. Razzano" <jrazzano@rwtguam.com>, "Jessica L. Toft" <jtoft@portofguam.com>

Cc: "Rory J. Respicio" <rjrespicio@portofguam.com>, Joy Esperanza <jesperanza@guamopa.com>

Hafa Adai,

Please see attached Decisions and Order RE Purchasing Agency's Motion to Dismiss for OPA-PA-24-002. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Best Regards,



Jerrick J.J.G. Hernandez, MA, CGFM, CFE, CICA, CGAP
Accountability Auditor

Office of Public Accountability

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