

1 **BERMAN O'CONNOR & MANN**
2 Suite 503, Bank of Guam Bldg.
3 111 Chalan Santo Papa
4 Hagåtña, Guam 96910
5 Telephone No.: (671) 477-2778
6 Facsimile No.: (671) 477-4366

7 *Attorneys for Appellant:*
8 *Fleet Services, Inc.*

RECEIVED
OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

JAN 20 2010

TIME: 4:16
BY: NAU
FILE No. OPA-PA-10-001

9 **OFFICE OF THE PUBLIC AUDITOR**

Docket No. OPA-PA _____

10 In the Appeal of
11 **FLEET SERVICES, INC.,**
12 **Appellant.**

**NOTICE OF PROCUREMENT
APPEAL**

13 **APPELLANT INFORMATION**

14 The Appellant is **Fleet Services, Inc.**, P.O. Box 10838, Tamuning, Guam 96931,
15 Tel. 473-4377/888-6270.

16 **APPEAL INFORMATION**

- 17 A. Purchasing Agency: General Services Agency ("GSA")
18 B. Identification Number of Procurement: GSA 001-10 On -site diesel delivery
19 C. The Decision being appealed was made on January 5, 2010 by the Chief
20 Procurement Officer Claudia S. Acfalle
21 D. This appeal is made from a Decision on protest of Award
22 E. Names of Competing Bidders: Morrico Equipment
23

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25
26 //
27 //

28 **COPY**

STATEMENT OF GROUNDS FOR APPEAL

A. Factual Background

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6 1. The Invitation for Bid was issued on October 28, 2009. The pages of the
7 Invitation for Bid relevant to this dispute are attached as Exhibit 1.

8
9 2. The Fleet Services Bid is attached as Exhibit 2. The only other Bid, from Morrigo
10 Equipment, is attached as Exhibit 3.

11 3. The Bid opening was on November 30, 2009. The Abstracts of the two Bids are
12 attached as Exhibit 4. The Abstracts show that Fleet Services did not submit a Bid Bond
13 Guarantee, whereas Morrigo Equipment did. A representative of Morrigo Equipment
14 attended the Bid opening.
15

16 4. The Bid of Fleet Services was \$3.43 per gallon, or \$1,200.50 for 350 gallons. Its rate
17 was based upon the Tumon Shell Station pump price on the date of delivery less two
18 percent. Morrigo's Bid was \$3.50 per gallon or \$1,225.00 for 350 gallons. Its rate was
19 based on the Tumon Shell Station price on the date of delivery with no discount. Fleet
20 Service's bid was therefore lower. John Limtiaco of Fleet Services was thereafter notified
21 that Fleet Services was the low bidder, and that he should pick-up a purchase order.
22

23
24 5. By letter dated December 16, 2009, Morrigo Equipment protested the Award to
25 Fleet Services on the grounds that Fleet Services had not provided a Bid Bond
26 Guarantee. This letter is attached as Exhibit 5.

27 //

28 //

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2
3 6. By letter dated December 16, 2009, GSA notified Fleet Services that the
4 procurement had been stayed due to the Morrigo protest. This letter is attached as
5 Exhibit 6.
6

7 7. By letter dated December 18, 2009, to Claudia Acfalle, Chief Procurement Officer,
8 Fleet Services responded to the Morrigo protest. This letter is attached as Exhibit 7.
9

10 8. By letter dated December 23, 2009, GSA cancelled the Award to Fleet Services.
11 However, that letter did not state whether GSA would re-bid the solicitation or award
12 the bid to Morrigo. This letter is attached as Exhibit 8.

13 9. By letter dated December 28, 2009, to GSA, Fleet Services inquired as to whether
14 the solicitation would be re-bid or if the bid would be awarded to Morrigo. The letter
15 stated that in the event GSA intended to award the bid to Morrigo, the letter would
16 serve as Fleet Service's protest. This letter is attached as Exhibit 9.
17

18 10. By GSA letter dated January 5, 2010 to Fleet Services, and received by Fleet
19 Services via facsimile on January 6, 2010, GSA advised Fleet Services that the bid was
20 awarded to Morrigo on the grounds that Fleet Services had failed to submit a Bid Bond.
21 This letter is attached as Exhibit 10.
22

23 11. By letter dated January 8, 2010, to GSA, Fleet Services requested reconsideration
24 of its protest. No response has been received by Fleet Services to this letter as of January
25 20, 2010. This letter is attached as Exhibit 11.
26

27 //

28

B. Argument

Fleet Services first notes that Morrico's protest should be rejected as untimely. The bid opening was on November 30, 2009, at which time a representative of Morrico was present, and it was noted on the bid abstracts that Fleet Services had not provided a Bid Bond Guarantee. Morrico therefore knew or should have known of its claim that the bid of Fleet Services should be rejected, and had fourteen (14) days pursuant to 5 G.C.A. §5425 (a) to file its protest. However, it did not file its protest until November 16, 2009, which was sixteen (16) days after November 30, 2009.

Next, on the merits, the Chief Procurement Officer erred in canceling the award to Fleet Services on the grounds that Fleet Services had failed to submit a Bid Bond. This is because it is not possible to calculate the amount of a Bid Bond. 5 G.C.A. §5212 (a) provides that a Bid Bond is required when "... the total price is estimated by the Chief Procurement Officer to exceed Twenty –Five Thousand dollars (\$25,000.00)..." However, in this procurement, the Special Provisions page, see Exhibit 1, provided that it is an "Indefinite Quantity Bid". It is stated that the quantities reflected are annual estimated requirements during a twelve-month period, and may increase during the term of the bid, and further that the bid is subject to the availability of funds. Moreover, both bids for this procurement were dependent upon the pump price of diesel fuel at the Tumon Shell Station, and thus would vary over the course of the year. Thus neither the quantity nor the rate could be known. In addition, the chief Procurement Officer did not estimate the total price as required by 5 G.C.A. §5212 (a). Since a Bid bond is required to be fifteen percent (15%) of the amount bid, see 5 G.C.A. § 5212 (b), and since this was an indefinite

1
2
3 quantity bid for which no total amount was stated in the Invitation to Bid, it is impossible to
4 calculate the amount of any Bid Bond, and a Bidder cannot be expected to do the impossible.

5 It is true that in the letter of December 23, 2009 the Chief Procurement Officer did make
6 an estimate of the amount of the Bid Bond that would be required. Assuming three deliveries per
7 week times fifty-two weeks at a rate of \$1,200.50 per week, the total procurement would be
8 \$187,278.00, which would require a fifteen percent Bid Bond of \$28,091.70. With one delivery
9 per week, the total amount was estimated to be \$62,426.00, which would require a bond of
10 \$9,363.90. However, there are two problems with this estimate. First, it does not take into
11 consideration the fact that the Government may order more or less diesel fuel, nor the fact that
12 the price of diesel fuel varies on a frequent basis. Importantly, this estimate was not part of the
13 Invitation for Bid as required by 5 G.C.A. § 5212 (a).
14

15 All that can be stated for sure is that there would be one delivery of 350 gallons as
16 specified on the Bid form in Exhibit 1. In the case of Fleet Services, that amount was \$1,200.50,
17 which was less than the \$25,000.00 threshold requiring a Bid Bond. If one is to attempt to
18 calculate any figure, that is the only figure that can be stated with any certainty.
19

20 In summary, a Bid Bond is not required for this procurement for any of three reasons.
21 First, it is impossible to know the total amount of procurement and therefore impossible to
22 calculate the amount of a Bid Bond. Next, no estimate of the total price was given in the
23 Invitation to bid as required by 5 G.C.A. § 5212 (a). Finally, if any amount is to be used, it would
24 only be the amount for one delivery as stated on the Bid Form in Exhibit 1, which is less than
25 \$25,000.00. Since a Bid Bond should not be required, Fleet Services should receive the Award
26 since it was the low bidder.
27
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3 Alternatively, it should be noted that the Bid Bond provided by Morrigo was only
4 \$2,250.00. See Exhibit 12. If a Bid Bond is required, then in no circumstance could a Bid Bond
5 of \$2,250.00 be sufficient. See Exhibit 11. In fact, the calculation stated in Morrigo's protest
6 letter, Exhibit 5, shows that its own Bid Bond was inadequate. Thus, if it is concluded that a Bid
7 Bond is required, the bids of both Fleet Services and Morrigo must be rejected, and a new
8 Invitation to Bid issued. It is submitted that any new Invitation for Bid should clearly specify the
9 amount of the required Bid Bond.
10

11 **DECLARATION RE COURT ACTION**

12 The undersigned does hereby confirm that to the best of his knowledge, no case
13 or action concerning the subject of this Appeal has been commenced in court. All parties
14 are required to and the undersigned party agrees to notify the Office of the Public
15 Auditor within 24 hours if court action commences regarding this Appeal or the
16 underlying procurement action.
17

18
19 Dated this 20th day of January, 2010.
20

21
22 Respectfully Submitted,

23 **BERMAN O'CONNOR & MANN**
24 Attorneys for Fleet Services, Inc.

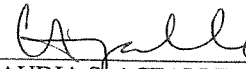
25
26 By: Bill R. Mann
27 **Bill R. Mann**
28

INVITATION FOR BID

ISSUING OFFICE:



GENERAL SERVICES AGENCY
GOVERNMENT OF GUAM
148 ROUTE 1, MARINE DRIVE
PITI, GUAM 96915


CLAUDIA S. ACFALLE
Chief Procurement Officer

DATE ISSUED: 10/28/09

BID INVITATION NO: GSA-001-10

BID FOR: On-Site Diesel Deliveries

SPECIFICATION: See Attached Specifications

DESTINATION: Department of Public Works - Solid Waste Management Div.

REQUIRED DELIVERY DATE: **Initial Delivery of 30 Days Upon Receipt of Purchase Order.**
This is an indefinite bid quantity for a period of one (1) year on an as needed basis upon availability of funds.

INSTRUCTION TO BIDDERS:

INDICATE WHETHER: INDIVIDUAL PARTNERSHIP CORPORATION

INCORPORATED IN: GUAM

This bid shall be submitted in duplicate and sealed to the issuing office above no later than (Time) **10:00am** Date: 11/12/09 and shall be publicly opened. Bid submitted after the time and date specified above shall be rejected. See attached General Terms and Conditions, and Sealed Bid Solicitation for details.

The undersigned offers and agrees to furnish within the time specified, the articles and services at the price stated opposite the respective items listed on the schedule provided, unless otherwise specified by the bidder. In consideration to the expense of the Government in opening, tabulating, and evaluating this and other bids, and other considerations, the undersigned agrees that this bid remain firm and irrevocable within **60** calendar days from the date opening to supply any or all the items which prices are quoted.

NAME AND ADDRESS OF BIDDER:

Fleet Services, Inc.

P.O. Box 10838

Tamuning, Guam 96931

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS BID:



AWARD: CONTRACT NO.: _____ AMOUNT: _____ DATE: _____

ITEM NO(S). AWARDED: _____

CONTRACTING OFFICER:

CLAUDIA S. ACFALLE
Chief Procurement Officer

NAME AND ADDRESS OF CONTRACTOR:

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS CONTRACT:

EXHIBIT 1

Accountability * Impartiality * Competence * Openness * Value

INVITATION FOR BID NO. : GSA-001-10

DESCRIPTION: ON-SITE DIESEL DELIVERIES

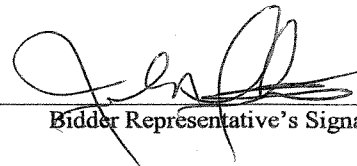
SPECIFICATION REMINDER TO PROSPECTIVE BIDDERS

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid enveloped, in duplicate, at the date and time for bid opening.

- (X) BID GUARANTEE (15% of Bid Amount) May be in the form of;
Reference #11 on the General Terms and Conditions
- a. Cashier's Check or Certified Check
 - b. Letter of Credit
 - c. Surety Bond – Valid only if accompanied by:
 - 1. Current Certificate of Authority issued by the Insurance Commissioner;
 - 2. Power of Attorney issued by the Surety to the Resident General Agent;
 - 3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.
- () BROCHURES/DESCRIPTIVE LITERATURE;
- (X) AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS - Must comply with the following requirements:
- a. Date of signature of the person authorized to sign the bid and the notary date must be the same.
- (X) OTHER REQUIREMENTS:
Non-Collusion Affidavit, U.S. D.O.L. Wage Determination & Restriction against Sexual Offenders Affidavit, No Kickbacks or Gratuities Affidavit and Ethical Standards Affidavit.

This reminder must be signed and returned in the bid envelope together with the bid. Failure to comply with the above requirements may be cause for disqualification and rejection of the bid.

On this 18TH day of NOVEMBER, 2009, I, John A. Lintiaco,
authorized representative of Fleet Services, Inc. acknowledge receipt of this special
reminder to prospective bidders with the above referenced IFB.


Bidder Representative's Signature

Felix P. Camacho

GENERAL SERVICES AGENCY

Michael W. Cruz

Governor



(Ahensian Setbision Hinirat)

Lt. Governor

Government of Guam

P.O. Box FG, Agana, Guam 96910

Lourdes M. Perez

Joseph C. Manibusan

Director, Dept. of Administration

Deputy Director

November 24, 2009

Invitation for Bid GSA-001-10

On Site Diesel Deliveries

Question submitted by Far East Equipment Co., LLC

Question 1: Can vendor specify current pump price which is adjustable based on Shell Tumon pump price?

Answer: Yes

Question 2: Please provide location of government generator referred to in notes along with diesel tank size.

Answer: See attachment Amendment #5

C. Acfalle 11/25/09
Claudia S. Acfalle
Chief Procurement Officer

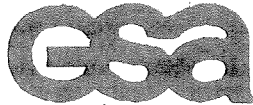
Pls refer to GSA @ 475-1727
ACKNOWLEDGEMENT COPY

RECEIVED BY: *John Limbaco*

DATE: 11-25-2009 8:00 AM

Company Name Fleet Services

Felix P. Camacho
Governor
Lourdes M. Perez
Director
Department of Administration



GENERAL SERVICES AGENCY
(Aghensian Setbision Hinirat)
Department of Administration
Government of Guam
148 Route 1 Marine Drive, Piti, Guam 96915
Tel: 477-8836-8 • Fax Nos.: 472-4217/4207

Michael W. Cruz, M.D.
Lt. Governor
Joseph C. Manibusan
Deputy Director
Department of Administration

**INVITATION FOR BID GSA-001-10,
ON SITE DIESEL DELIVERIES**

AMENDMENT NO. 6

November 27, 2009

1. Amend to change the Bid Opening Date from: Friday, November 27, 2009 at 10:00 A.M. to now read: Monday, November 30, 2009 at 10:00 A.M.
2. All others remain unchanged.

for: Pedro F. San Nicolas

**CLAUDIA S. ACFALLE DATE
CHIEF PROCUREMENT OFFICER**

PLS. refer to GSA @ 475-1727
ACKNOWLEDGEMENT COPY

RECEIVED BY: Charlene Mel

DATE: 11/27/09

Company Name: Fleet Services Inc

11/27/09
808/6994

Department of Public Works – Solid Waste

ITEM NO.	DESCRIPTION	UNIT	UOM	UNIT PRICE	EXTENSION
1.1	On-Site Diesel Deliveries As per the following Specifications	350	gal.	\$ 3.43	\$ 1,200.50
	<u>SPECIFICATIONS:</u> Deliveries to the Ordot Dump for all Solid Waste Management Division Heavy Equipments. Monday, Wednesday, & Friday Minimum of 350 Gallons on Delivered Schedule				
	<u>Following Equipments:</u> Excavator 360LC-7 Hyundai EQ-15 CAT DOZER D-8 EQ-02 D-9R SKID STEER LOADER CAT DOZER D8				

RATE Quoted is Based on Tumor
Site all pump price Less 2%. THE
Price will be Adjusted Accordingly on
BIDDING ON OR REMARKS:

DAY OF DELIVERY.

comply
comply
comply
comply
comply

**Note to include Generators that require diesel fuel to be filled that might be required for other locations within the government.

Department of Public Works - Solid Waste

COPY

ITEM NO.	DESCRIPTION	UNIT	UOM	UNIT PRICE	EXTENSION
1.1	On-Site Diesel Deliveries As per the following Specifications	350	gal.	\$ 3.50	\$ 1,225.00
				AS OF 11/27/2009	

* SEE ATTACHED COPY OF OUR LETTER OF DEVIATION.

SPECIFICATIONS:

BIDDING ON OR REMARKS:

Deliveries to the Ordot Dump for all
Solid Waste Management Division Heavy Equipments.

Monday, Wednesday, & Friday

YES

Minimum of 350 Gallons on Delivered
Schedule

YES

Following Equipments:

Excavator 360LC-7 Hyundai

YES

EQ-15 CAT DOZER D-8

YES

EQ-02 D-9R

YES

SKID STEER LOADER

YES

CAT DOZER D8

YES

**Note to include Generators that require diesel fuel to be filled
that might be required for other locations within the government.



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



19 November 2009

Ms. Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
Government of Guam
P.O. Box FG
Agana, Guam 96910

COPY

Dear Ms. Acfalle,

RE: Bid No: GSA-001-10 Letter of Bid Specification Deviation
On Site Diesel Deliveries

Item Number 1.1 On-Site Diesel Deliveries 350 Gallon. As per the following specifications.

Diesel price is per posted pump price per gallon as posted at the Shell Service Station opposite JFK along Marine Corp Drive. Pump price is valid on the date of each delivery. Minimum delivery is 30 Gallons per site.

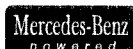
As of today November 19, 2009 pump price at the Shell Service Station opposite JFK along Marine Corp Drive is \$3.50 per gallon.

Please contact me at 1-671-688-5274 with any questions.

Regards,

Rene Molinos
Assistant General Manager
Morricco Equipment LLC
Cell # (671) 688-5274
rene@morricoequipment.com

ON-SITE DIESEL DELIVERY



ON SITE DIESEL DELIVERIES

OFFEROR(S)

FLEET SERVICES

Acceptance Time	Delivery Acceptance	Delivery Specified IN IFB (Days)
11/18/09		
11/18/09		
11/18/09		
11/18/09		
11/18/09		
11/18/09		

A	B	C	D	E	F
-	-	-	-	-	-

Item No.	Qty.	Unit	Price
1/1	350 gk		EXT
	343		\$1,200.50

MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT	11/18/09																			
FORM OF NON-COLLUSION AFFIDAVIT	11/18/09																			
SEX OFFENDERS COMPLIANCE AFFIDAVIT	11/18/09																			
BID BOND GUARANTEE Pubc W-27-127	11/18/09																			
ETHICAL STANDARDS AFFIDAVIT	11/18/09																			
NO GRATUITIES OR KICKBACK AFFIDAVIT	11/18/09																			

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 herein

Signature: Pablo F. Kay Victor
 DATE: 11/30/09

Signature: [Handwritten Signature]
 DATE: 11/31/09

- LEGEND(S)**
- (A) Non-Collusion
 - (B) Major Shareholders Disclosure Affidavit
 - (C) DOJ/Sec Offenders Compliance Affidavit
 - (D) Bid-Bond Form
 - (E) Ethical Standards Affidavit
 - (F) No Gratuities or Kickbacks Affidavit

Number of Solicitation 2
 Number of Bids Received 2
 Number of Suppliers or Services

Department of Administration
 General Services Agency
 Government of Guam

Invitation Number GSA-001-10
 Opening Date Nov 30, 2007 Time 10:00 AM

ON SITE DIESEL DELIVERIES

OFFEROR(S)	Acceptance Time	Delivery Acceptance	Delivery Specified IN IFB (Days)	ABSTRACT OF BIDS						Item No.	Qty. Unit	Description	Unit Price	Total Price
				A	B	C	D	E	F					
MORRIS EQUIPMENT	11/18/09								1.1	350 gallons	EXT			
										1.25				
MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT	11/18/09													
FORM OF NON-COLLUSION AFFIDAVIT	11/18/09													
EX OFFENDERS COMPLIANCE AFFIDAVIT	11/18/09													
ID BOND GUARANTEE	11/18/09													
ETHICAL STANDARDS AFFIDAVIT	11/18/09													
GRATUITIES OR KICKBACK AFFIDAVIT	11/18/09													

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 herein.

BIDDER: *[Signature]*
 DATE: 11/30/09

11/30/09

- LEGENDS)
- (A) Non-Collusion
 - (B) Major Shareholders Disclosure Affidavit
 - (C) DOL/SEX Offenders Compliance Affidavit
 - (D) Bid-Bond Form
 - (E) Ethical Standards Affidavit
 - (F) No Gratuities or Kickbacks Affidavit



Sales, Rental, Parts and Service

ADDRESS: / Ypao Road Tamuning GUAM 96913

OFFICE: Phone 1-671-649-1946
Fax 1-671-649-1947

SPARE PARTS: Phone 1-671-646-7914
Fax 1-671-646-7900

WEB: www.morricequipment.com



December 16, 2009

Ms. Claudia S. Acfalle
Chief Procurement Officer
General Service Agency
Government of Guam
P.O. FG
Hagatna, Guam 96932

RE: Invitation to Bid GSA-001-10 On-Site Diesel Deliveries.

Ms. Acafalle,

This letter is to serve as our official protest to the above bid.

The basis of this protest is based on Fleet Services Inc. not submitting a bid bond in the amount of 15% as stipulated on the Specification Reminder to Prospective Bidders which was checked off and is a requirement of the bid.

Based on the requirements On-Site Deliveries 350 gallon As per the following Specifications Deliveries to the Ordot Dump for all Solid Waste Management Division Heavy Equipments. Monday Wednesday and Friday Minimum of 350 Gallons on Delivered Schedule the amount of \$1,200.50 only covers one delivery.

Based on the Required Delivery Date: Initial Delivery of 30 Days Upon Receipt of Purchase Order. This is an indefinite bid quantity for a period of one (1) year on an as needed basis upon availability of funds the price of \$1,200.50 submitted by Fleet Services Inc. the total bid amount will equal \$ 4,802.00 x 12 months equals \$ 57,624.00 therefore a bid bond was to be submitted as required by the Specification Reminder to Prospective Bidders.

Regards,

Frank Flores
Morrigo Equipment LLC
Cell 1-671-689-6748

ON-SITE DIESEL DELIVERY



EXHIBIT 5

Felix P. Camacho

Governor



Lourdes M. Perez
Director, Dept. of Administration

GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)

Government of Guam

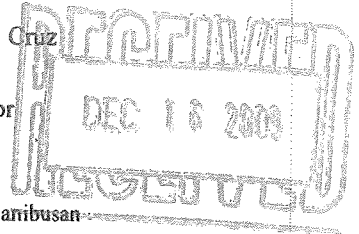
P.O. Box FG, Agana, Guam 96910

Michael W. Cruz

Lt. Governor

Joseph C. Manibusan

Deputy Director



December 16, 2009

Attn: Mr. John Limtiaco
Fleet Services
P.O. Box 10838
Tamuning, Guam 96931
(T) 473-4374 (F) 473-4370

Re: Stay of Procurement

Dear Mr. Limtiaco,

Buenas yan Hafa Adai! A stay of procurement is in effect place due to a protest lodged by Morrico Equipment on GSA-01-10, On-Site Diesel Deliveries with the General Services Agency.

If you have any questions please contact me at 475-1713.

Sincerely,

CLAUDIA S. ACFALLE
Chief Procurement Officer

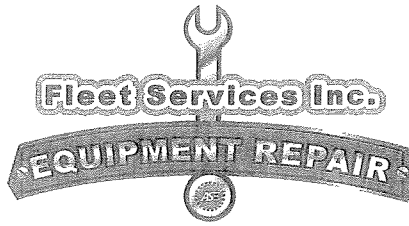
Pls refer to GSA @ 475-1727
ACKNOWLEDGEMENT COPY

RECEIVED BY: Charlene Medici

DATE: 12/16/09 Jrs 402

Company Name Fleet Services

EXHIBIT 6



Ms. Claudia Acfalle
Chief Procurement Officer
General Services Agency
Government of Guam
P.O. Box FG, Agana, Guam 96910

December 18, 2009

Subject: Bid No. GSA-01-10 Protest

Dear Ms. Acfalle,

I am in receipt of your notice of a Stay of Procurement in the above subject bid due to a Protest lodged by Morrico Equipment. My understanding of the Protest Morrico has lodged is in result to a bid bond not being provided by our company.

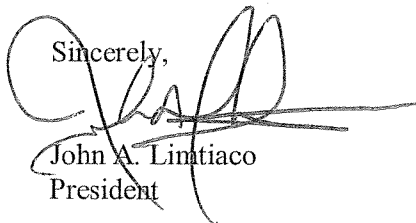
I would like to respond to this Protest as having no merit as our bid was submitted in accordance to the bid specification which requested for a price for 350 gallons of diesel fuel. Although the specification mentions delivery requirements of Monday, Wednesday, and Friday and a minimum 350 gallons on delivered schedule, the front page of the Invitation for Bid clearly states that it is on an "as needed basis" so there are no guarantees of the total annual requirements. Our total bid price for the 350 gallons of diesel fuel as outlined in the pricing request portion of the bid was for \$ 1,200.50. This falls below the dollar amount required for a bid bond as outlined in Public Law 27-127.

Secondly it is impossible for a bidder to calculate a bid bond amount as there is no mention in the bid specification of a maximum amount of fuel that will be required and without this value any bid bond submitted would be considered inadequate. It is also not the responsibility of the bidder to read into what the government may or may not require. It is the governments responsibility to spell out what it was bidding and it is clear based on the pricing page that the government was only bidding for 350 gallons of diesel fuel.

And lastly Fleet Services, Inc. bid of \$ 3.43 per gallon of diesel fuel was lower than Morrico Equipment's bid of \$ 3.50 per gallon of diesel fuel so no matter what the quantity of fuel may or may not be Far East bid price will always be lower than Morrico Equipment's bid.

In closing, I look forward to a quick resolution of no merit to Morrico Equipments protest.

Sincerely,


John A. Limtiaco
President

Date: 12-21-09
Time: 2:41 p.m.
Sign: J.A. Limtiaco
Print: J.A. Limtiaco

EXHIBIT 7

Felix P. Camacho
Governor



GENERAL SERVICES AGENCY
(Ahensian Setbision Hinirat)
Department of Administration
Government of Guam
148 Route 1 Marine Drive, Piti, Guam 96915
Tel: 477-8836-8 • Fax Nos.: 472-4217/4207

Michael W. Cruz
Lt. Governor

December 23, 2009

Memorandum

Mr. John Limtiaco
President
Fleet Services, Inc
P.O. Box 10838

Re: GSA Bid Protest Number 001-10 (On Site Diesel Delivery)

Dear Mr. Limtiaco:

As you were previously notified, a stay of procurement was put into effect on December 17, 2009 regarding the above-entitled bid. The reason for the protest was based upon the failure of your company to comply with the requirement of submitting a 15% bid bond at the time of the bid submission as required in the law and in the specifications for any bid over \$25,000.

After receiving the protest, we reviewed the law and the general terms and conditions of the bid and have determined the following:

Section 11 of the general terms and conditions provide in pertinent part:

Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by the Government pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier's Check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Treasure of Guam in the amount of fifteen percent (15%) of his highest total bid offer. Pursuant to Public Law 27-127, all competitive sealed bidding for the procurement of supplies and services exceeding \$25,000 a 15% Bid Security of the total bid price must accompany the bid package. (Emphasis added).

In this case, your company provided a price quotation of \$1,200.50. A review of this pointed out errors in your calculations. First, the pricing you gave was based upon a rate of \$3.43 a gallon minus two (2) percent on a figure of 350 gallons a day. However, the specifications stated that the delivery would be for three days a week, or a total of approximately 1050 gallons a week. Second the bid was for an indefinite bid quantity of one (1) year, which means that the total price must be multiplied by 52 weeks or a total of

COMMITTED TO EXCELLENCE

EXHIBIT 8

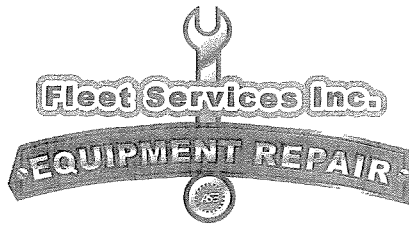
\$1200.50 times three (3) deliveries times fifty-two (52) weeks or a total bid price of \$187,278. Even if the government was to accept that there would only be one delivery per week, the figure would be \$1200.50 times fifty-two (52) weeks or a total bid price of \$62,426. In either event, the total bid price would be above \$25,000, which requires a 15% bid security, which was not submitted.

Based upon the above, it is my determination that the protest has merit and that the awarding of this bid to you is hereby cancelled.

You have the right to seek any administrative or judicial review provided by law.


CLAUDIA S. ACFALLE
Chief Procurement Officer

Chedao tao



Ms. Claudia Acfalle
Chief Procurement Officer
General Services Agency
Government of Guam
P.O. Box FG, Agana, Guam 96910

December 28, 2009

Subject: Bid No. GSA-001-10 Protest

Dear Ms. Acfalle,

I am in receipt of your letter dated December 23, 2009 advising us of our rights to seek any administrative or judicial review provided by law. I am not sure why this letter has been sent to us as I have not protested this bid at this point. I have only sent in my opposition to the protest lodged by Morrico Equipment.

Your letter indicates that you have cancelled the award of the bid to our company but does not state if you will be re-bidding this solicitation or if you will be awarding this bid to Morrico equipment. If this solicitation will be re-bid in order to clarify the governments request. I do not intend to protest the cancellation of the award. However if it's the intent of GSA is to award this bid to Morrico equipment, then this letter will serve as our formal Protest of the subject bid.

I respectfully disagree that our company was required to submit a bid bond. It is the government responsibility to let the bidders know what they are bidding on and the bidding line on the bid documents clearly state the government is bidding 350 gallons of diesel fuel which is what we provided pricing on and used as our determination whether we would require bid bonding.

Although the specification stated a delivery schedule of three day a week and an indefinite bid quantity of one (1) year there is no guarantee of the volume as the bid also state that this will be on an "as needed basis". The assumptions that are made that this bid's value at a minimum would be \$ 25,000.00 is a personal opinion. It is also possible that this bid's value could be under \$ 25,000.00 as the government could make one order for fuel and not be required under this solicitation to purchase any more fuel since it has stated it is on an "as needed basis".

If the government wanted a bid bond it should have been clear on the quantity the bidders were basing there bids on and written on the bid line that it was bidding on 54,600 gallons of fuel. This figure would be based on the minimum delivery amount, the schedule of delivery, and a period of one year which is 350 gallons X 3 deliveries per week X 52 weeks.

In closing, I look forward to your response on whether its the government intent to clarify and re-bid this solicitation or attempt to award this bid to Morrico Equipment.

Sincerely,

[Signature]
John A. Limtiaco
President

Date: 12.29.09
Time: 3:03 P.M.
Sgt: Chedao tao
Print: Chedao tao

EXHIBIT 9

Felix P. Camacho
Governor



GENERAL SERVICES AGENCY

(Abensian Setbision Hinirat)
Department of Administration
Government of Guam

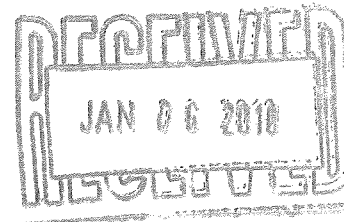
148 Route 1 Marine Drive, Piti, Guam 96915

Tel: (671) 475-1707 thru 1729 • Fax Nos: (671) 472-4217/475-1727/475-1716

Michael W. Cruz, M.D.
Lt. Governor

Joseph C. Manibusan
Deputy Director
Department of Administration

Lourdes M. Perez
Director
Department of Administration



Fax

To: John Limtiaco – GM Fleet Services **From:** Frasia Lujan

Fax: 473-4370 **Pages:** 2

Phone: 475-1710 **Date:** January 06, 2010

Re: Attach letter re: Protest GSA Bid-
001-10 (On Site Diesel Delivery)

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

● **Comments:**

Please find the attached letter from GSA CPO regarding the above subject.

Please send back the confirmation receipt of said document.

Thank You.

Acknowledgement Copy (Please Print)

Received By: Charlene Mendivil

Date: 1/6/10
Job 3772

Felix P. Camacho
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration
Government of Guam

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: 477-8836-8 • Fax Nos.: 472-4217/4207

Michael W. Cruz
Lt. Governor

January 5, 2010

Memorandum

Mr. John Limtiaco
President
Fleet Services, Inc.
P.O. Box 10838
Tamuning, Guam 96931

Re: GSA Bid Protest Number 001-10 (On Site Diesel Delivery)

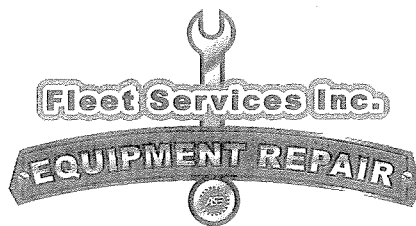
Dear Mr. Limtiaco:

We are in receipt of your memorandum dated December 28, 2009, in which you inquired as to the status of the above GSA bid (On Site Diesel Delivery), as you believed that our memorandum to you dated December 23, 2009 was not clear as to what the government's action will be.

The General Services Agency has cancelled the awarding of the bid to you and has awarded the bid to Morrigo for the stated reason that your company failed to comply with the requirement of submitting a 15% bid bond as stated in Section 11 of the General Terms and Conditions as well as in Public Law 27-127.

The terms and conditions for this bid was more than clear and your protest is without merit. You may seek any judicial and administrative remedies available to you by law.


CLAUDIA S. ACFALLE
Chief Procurement Officer



GSA. 01.11.10
Date: _____
Time: _____
Sign: *Sped/ao/tae*
Print: _____
CT.

Ms. Claudia Acfalle
Chief Procurement Officer
General Services Agency
Government of Guam
P.O. Box FG, Agana, Guam 96910

January 8, 2010

Subject: Request for Reconsideration on Bid No. GSA-001-10 On Site Diesel Delivery

Dear Ms. Acfalle,

As provided by the procurement law I am requesting reconsideration on our award cancelation and subsequent award to Morrico Equipment based on the following.

1. In your letter dated December 23, 2009 you provided a bid calculation method to determine if the bid required a bid bond or not. Your calculation was based as follows:

Bid Price X (3) deliveries X (52) Weeks.

In the case of Fleet Services our bid bond determination should have been calculated as:

$\$ 1200.50 \times 3 \times 52 = \$ 187,278.00$ and would require a 15% bid bond of \$ 28,091.70

In the case of Morrico Equipment their bid bond determination should have been calculates as:

$\$ 1225.00 \times 3 \times 52 = \$ 191,100.00$ and would require a 15% bid bond of \$ 28,665.00

According to the bid abstract Morrico Equipment only submitted a bid bond of \$ 2,250.00 which would be insufficient according to the first method you provided to determine if a bid bond were require or not.

2. You also provided an alternate scenario of deliveries being made only once a week to determine if the bid required a bid bond or not. Your calculation was based as follows:

Bid Price X (1) delivery weekly X (52) Weeks.

In the case of Fleet Services our bid bond determination should have been calculated as:

$\$ 1200.50 \times 1 \times 52 = \$ 62,426.00$ and would require a 15% bid bond of \$ 9,363.90

In the case of Morrico Equipment their bid bond determination should have been calculates as:

$\$ 1225.00 \times 1 \times 52 = \$ 63,700.00$ and would require a 15% bid bond of \$ 9555.00

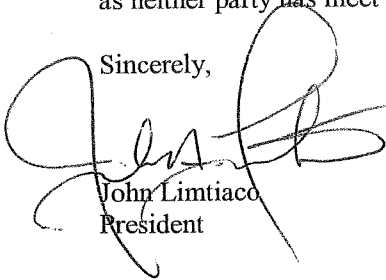
EXHIBIT 11

According to the bid abstract Morrico Equipment only submitted a bid bond of \$ 2,250.00 which would be insufficient even according to your alternate method to determine if a bid bond were require or not.

3. It should also be noted that both Fleet Services and Moricco both submitted bids based on a floating price based on the Shell Tumon spot price. Because this price is floating it would not be possible to determine a bid bond amount for any period of time.

In summary, based on both methods you used to determine the requirement of a bid bond, neither Fleet Services nor Morrico Equipment had supplied a sufficient bid bond for this solicitation. Moricco's Bid Bond can also not be determine to be sufficient as it based on a floating pump price. I would like to request that GSA reconsider the award to Fleet Services or as alternative cancel and rebid this solicitation as neither party has meet the bid bond requirement.

Sincerely,



John Limtiaco
President

GOVERNMENT OF GUAM

GENERAL SERVICES AGENCY
148 Route 1, Marine Drive
Piti, Guam 96925

COPY


BID BOND
NO. BD-BO-GUM-2009-1079


KNOW ALL MEN BY THESE PRESENTS that Morrigo Equipment LLC, as Principal Hereinafter called the Principal, and (Bonding Company), Century Insurance Company (Guam) Ltd. A duly admitted insurer under the laws of the Territory of Guam, as Surety, hereinafter called the Surety are Held firmly bound unto the Territory of Guam for the sum of Two Thousand, Two Hundred Fifty and 00/100 Dollars (\$ 2,250.00), for Payment of which sum will and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

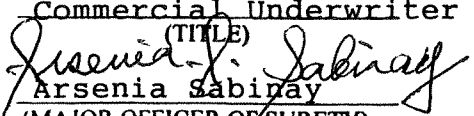
WHEREAS, the Principal has submitted a bid for (identify project by number and brief description) Bid No.: GSA-001-10
On Site Diesel Deliveries

NOW, THEREFORE, if the Territory of Guam shall accept the bid of the Principal and the Principal shall enter into a Contract with the Territory of Guam in accordance with the terms of such bid, and give such bond or bonds as may be specified in bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Territory of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Territory of Guam may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain full force and effect.

Signed and sealed this 12th day of November 2009.


Lucrecia Cadiz
(WITNESS)


Morrigo Equipment LLC
(PRINCIPAL) (SEAL)

Commercial Underwriter
(TITLE)

Arsenia Sabinay
(MAJOR OFFICER OF SURETY)


Rodney J. Rankin
(MAJOR OFFICER OF SURETY)

Underwriter
(TITLE)

Regional Director
(TITLE)

Aon Insurance Micronesia (Guam) Inc.
(RESIDENT GENERAL AGENT)

SEE INSTRUCTIONS IN BACK PAGE FOR SUPPORTING DOCUMENTS REQUIRED.

1 **BERMAN O'CONNOR & MANN**
2 Suite 503, Bank of Guam Bldg.
3 111 Chalan Santo Papa
4 Hagåtña, Guam 96910
5 Telephone No.: (671) 477-2778
6 Facsimile No.: (671) 477-4366

7 *Attorneys for Appellant:*
8 *Fleet Services, Inc.*

RECEIVED
OFFICE OF THE PUBLIC AUDITOR
PROCEEDINGS AND APPEALS

JAN 20 2010

TIME: 4:16
BY: WHL
FILE No. OPA-PA 10-001

9 **OFFICE OF THE PUBLIC AUDITOR**

Docket No. OPA-PA _____

10 In the Appeal of
11 FLEET SERVICES, INC.,
12 Appellant.

REQUEST FOR HEARING

13
14 The Appellant Fleet Services, Inc. requests a hearing in the Appeal stated above
15 pursuant to 2 G.A.R § 12108 (a).

16
17 Dated this 20th day of January, 2010

18
19
20 **BERMAN O'CONNOR & MANN**
21 Attorneys for Appellant
22 Fleet Services, Inc.

23
24 By: Bill R. Mann
25 Bill R. Mann

26
27
28 **COPY**