

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: Fax:	(671) 475-1707 (671) 475-1727	Pages:	6 (including cover page)
CC:	Kevin J. Fowler Dooley Roberts & Fowler LLP (Attorneys for Morrigo Equipment, LLC)	Date:	November 19, 2014
Phone: Fax:	(671) 646-1222 (671) 646-1223	Phone: Fax:	475-0390 x. 216 472-7951

Re: OPA-PA-14-011 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

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

November 19, 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-14-011

Dear Ms. Acfalle,

Please be advised that Morrico Equipment, LLC (Morrico) filed an appeal with the Office of Public Accountability (OPA) on November 18, 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 **Wednesday, November 26, 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 **Friday, December 4, 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-14-011

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
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 E-mail: fowler@guamlawoffice.com

Attorneys for Appellant
 Morrico Equipment, LLC

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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) General Services Agency.
- B) Invitation for Bid No. GSA065-14; a procurement solicitation for school buses.
- C) Decision being appealed is the GSA Denial of Procurement Protest, dated November 12, 2014, and received by Morrigo on November 13, 2014.
- 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 OPA 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** and is incorporated herein by reference.
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. In its letter denying the protest, the GSA relied on the fact that 5 GCA § 5425(b) provides that the Chief Procurement Officer of the GSA has the authority to settle and resolve protests and that this is why the GSA entered into a settlement agreement with Triple J. However, the GSA did not resolve Triple J’s protest by way of a settlement agreement under Section 5425(b). Rather, on September 26, 2014, it acted pursuant to 5 GCA § 5425(c) and issued a written decision denying Triple J’s protest and advising that it had a right to administrative or judicial review. *See, In the Matter of Appeal of Triple J Enterprises, Inc., OPA-PA-14-009, Notice of Appeal, Exhibit L.* Thereafter and upon Triple J’s appeal to the OPA, there was no longer any protest pending before the GSA which it could resolve pursuant to 5 GCA § 5425(b). Furthermore, the GSA failed to

provide notice to Morrico of Triple J's appeal to the OPA and thereby denied Morrico's due process rights to notice and an opportunity to be heard.

10. Morrico requests that the OPA rule that the GSA's denial of Morrico's protest was arbitrary, capricious and an abuse of discretion, and that the OPA order the GSA to set aside its agreement to award a contract to Triple J.

11. Morrico further requests that the OPA consolidate this appeal with the appeal of Triple J in OPA-PA-14-009.

12. 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 18th day of November, 2014.

DOOLEY ROBERTS & FOWLER LLP


By: 

KEVIN J. FOWLER
Attorneys for Appellant
Morrigo 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 18th day of November, 2014.



TORGUN SMITH

TRANSACTION REPORT

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TOTAL				0:02:20	12		

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