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PROCUREMENT APPEAL

October 30, 2013

VIA HAND DELIVERY

The Office of Public Accountability - Guam
Suite 401, Pacific News Building
238 Archbishop Flores Street
Hagatna, Guam 96910
Tel: 475-0390
Fax: 472-7951

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 10/30/13

TIME: 1:07 AM PM BY: J-h

FILE NO OPA-PA: 13 - 015

Re: Transmittal Letter

Dear Madam Public Auditor:

Pursuant to 2 GAR § 12104(b), please find the appeal of appellant Morrico Equipment, LLC of the denial of its protest in connection with Guam Power Authority IFB 064-11 transmitted with this letter.

Sincerely,

DOOLEY ROBERTS & FOWLER LLP



Kevin J. Fowler

Enclosures

Kevin J. Fowler
DOOLEY ROBERTS & FOWLER LLP
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RECEIVED
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DATE: 10/30/13
TIME: 1:00 AM PM BY: J-L
FILE NO OPA-PA: 13-019

Attorneys for Appellant
Morrico Equipment, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of)
MORRICO EQUIPMENT, LLC,)
Appellant.)
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 Power Authority ("GPA"), Consolidated Commission on Utilities ("CCU").
- B) Invitation for Bid No. GPA-064-11; 55' Bucket Trucks. Pursuant to Amendment Number 1 issued on June 17, 2011, the requirement of a working height of 55' was changed to 60'.
- C) Decision being appealed is the GPA Denial of Procurement Protest, dated October 15, 2013, and received by Morrigo on October 23, 2013.
- D) Appeal is made from a decision on protest of method, solicitation or award.
- E) Names of competing bidders:

Mid-Pac Far East (“Mid-Pac”), Far East Equipment Company, Triple J Enterprises and Pacific Waste Systems.

Form and Filing:

1. On June 14, 2011, the GPA let the subject Invitation for Bid and the bid opening occurred on July 12, 2011. On October 5, 2011, the GPA advised Morrico that its bid was rejected due to high price and that it was recommending award to Far East Equipment. A true and accurate copy of the GPA notice of rejection sent to Morrico is attached hereto as **Exhibit A**.

On August 8, 2013, Morrico learned of the GPA contract award to Mid-Pac through a GPA press release published in the Pacific Daily News (“PDN”). A true and accurate copy of the abstract for the PDN story is attached hereto as **Exhibit B**. The press release was also published on the GPA website on August 7, 2013. A true and accurate copy of the GPA press release as posted on its website is attached hereto as **Exhibit C**. On August 13, 2013, the GPA advised Morrico by telephone that Far East Equipment could not perform and that GPA therefore awarded the contract to Mid-Pac.

The award to Mid-Pac was and is improper. Mid-Pac submitted a bid by which it offered to supply the GPA with a Paccar Kenworth T370 truck and a Terex Hi Ranger HRX60 body. *See*, Exhibits D and E, attached hereto. Mid-Pac was subsequently allowed, almost two years after the bid opening, to substitute an International truck with an Altec body. *See, Id.* In addition, although the GPA Invitation for Bid required a John Deere Yellow with White on Aerial, Mid-Pac was allowed to supply the truck and body in white, which lessens the cost. *See, Exhibit D*, attached hereto.

Morrigo, through counsel, served its protest on the GPA on August 20, 2013. A true and accurate copy of the Morrigo protest is attached hereto as Exhibit D. In a letter dated October 15, 2013, but received by Morrigo and its counsel on October 23, 2013, the GPA denied the Morrigo protest. A true and accurate copy of the GPA protest denial is attached hereto as **Exhibit E**.

The GPA denied the Morrigo protest in part because it was not timely filed within 14 days of the GPA award of a contract to Mid-Pac. However, GPA did not send any notice to Morrigo pursuant to 2 GAR § 3109(q), which requires that an agency must send notice of award to unsuccessful bidders when the procurement is valued at over \$25,000.00. The GPA procurement at issue was valued at over \$25,000.00. As noted above, Morrigo learned about the award to Mid-Pac on August 8, 2013, and timely filed a protest on August 20, 2013.

2. Morrigo requests that the Office of Public Auditor (“OPA”) rule that the award to Mid-Pac is not supported by any provision of the Guam Procurement Act or the Guam Procurement Regulations, that the award to Mid-Pac was an abuse of discretion and is null and void, that the GPA must award the contract to Morrigo, that GPA proceed with the procurement to Morrigo for the specified four year term with the purchase of two (2) trucks per annum, and that Morrigo be awarded its bid costs.

3. Morrico is still assembling all supporting documents.

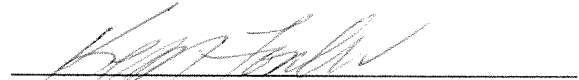
Declaration regarding court action:

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

Dated this 30th day of October, 2013.

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 30th day of October, 2013.



TORGUN SMITH



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 HAGÁTÑA, GUAM U.S.A. 96932-2977
BID STATUS

October 05, 2011

Torgun Smith
Executive Vice President
Morrice Equipment, LLC
197 Ypao Road
Tamuning, Guam 96913

BID INVITATION: GPA-064-11

OPENED: July 12, 2011

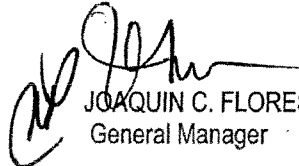
DESCRIPTION: 55' Bucket Trucks

The following is the result of the above-mentioned bid. Refer to items checked below.


- Cancelled (in its entirety), or partially canceled due to:**
- () Insufficient funds;
 - () Change of specifications;
 - () Best Interest of the Government
- Rejected due to:**
- () Late submission of bid;
 - () No bid security or insufficient bid security amount submitted: as required by Section 11 of the General Terms and Conditions;
 - () Not meeting the delivery requirements as stated in the IFB;
 - () Non-conformance with the specifications;
 - () Inability to provide future maintenance and services to the equipment;
 - (X) High price; Line Item No.: 1.0: 2/Each @ \$237,486.00/Each
 - () Others:

Bid is recommended for award to: Far East Equipment, LLC, Line Item Nos.: 1.0: 2/Each, in the total amount of \$456,250.00.

The Guam Power Authority greatly appreciates the interests and participation in our bids.


JOAQUIN C. FLORES, P.E.
General Manager

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Power agency adds two new bucket trucks

Pacific Daily News - Hagatna, Guam
 Author: Conerly, Michelle
 Date: Aug 8, 2013
 Start Page: n/a
 Section: Local News
 Text Word Count: 140

Abstract (Document Summary)

"With these additions, GPA can continue ongoing maintenance and capital improvement work, including streetlight repairs, outage response and service calls."

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EXHIBIT

B

DOOLEY ROBERTS & FOWLER LLP
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Of Counsel:
MELINDA C. SWAVELY

Writer's Direct Email:
Fowler@GuamLawOffice.com

August 20, 2013

VIA FACSIMILE TRANSMISSION
and HAND DELIVERY

Simon A. Sanchez II
Chairman

CONSOLIDATED COMMISSION ON UTILITIES

c/o Guam Power Authority
P.O. Box 2977
Hagatna, Guam 96932
Tel: 648-3002 / Fax: 648-3290

John M. Benavente, P.E.
Joaquin Flores
General Manager

GUAM POWER AUTHORITY

P.O. Box 2977
Hagatna, Guam 96932
Tel: 648-3225 / Fax: 648-3290

Joaquin C. Flores, GM



Re: GPA 064-11; Bucket Trucks

Dear Sirs:

This office represents Morrico Equipment LLC ("Morrico"), 197 Ypao Road, Tamuning, Guam 96913, with respect to the above-referenced matter.

Morrico hereby protests any further award with respect to the above-referenced procurement.

The reasons for this protest are as follows:

1. GPA awarded the contract to Mid-Pac Far East ("Mid-Pac"), whose bid submittals did not comply with and was unresponsive to the solicitation.

EXHIBIT D

Simon A. Sanchez II
John M. Benevente
Joaquin Flores
August 20, 2013

2. Mid-Pac's bid submittals quoted a Paccar Kenworth T370 truck with a Terex Hi Ranger HRX60 body. However, it delivered an International truck with an Altec body.

3. The solicitation required, in Section A.14, a John Deere Yellow with White on Aerial. Mid-Pac supplied white on the truck and on the body.

Please be advised that pursuant to the Guam Procurement Law you are not to proceed further with the procurement or award of a procurement contract prior to resolution of a bid protest, 5 G.C.A. § 5425.

I look forward to your resolution of this protest expeditiously.

Sincerely,

DOOLEY ROBERTS & FOWLER LLP



Kevin J. Fowler

KJF/tg/M278.14 GPA Bucket Trucks



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Dooley Roberts & Fowler
RECEIVED

OCT 23 2013

11:56 Monique

Tel: (671) 648-3225; Fax: 648-3290

DENIAL OF PROCUREMENT PROTEST

October 15, 2013

VIA FAX: 646-1223

Morrigo Equipment LLC
C/O Mr. Kevin Fowler
Dooley Roberts & Fowler LLP
856 South Marine Corps Drive, Ste 201
Tamuning, Guam 96913

RE: Guam Power Authority's Response to Morrigo Equipment LLC's Protest dated August 20, 2013 for GPA-IFB-064-11, Bucket Trucks

Dear Mr. Fowler:

I have reviewed your protest letter on behalf of Morrigo Equipment LLC, dated August 20, 2013, protesting the Guam Power Authority's (GPA) award of bucket trucks to Mid-Pac Far East, after the default of the original bidder, Far East Equipment. Your Protest is hereby denied for the following reasons:

1. You indicated in your letter that the submission provided by Mid Pac was not responsive to the solicitation. You are correct that originally Mid Pac's bid submittal quoted a Kenworth truck and High Ranger body, which met the requirements of the bid. When the original low bidder, Far East, defaulted in delivery, GPA contacted the next lowest responsive bidder, Mid Pac, and requested whether they would honor the price submitted. They agreed to meet the original price, but requested a deviation in brand name to an International truck with an Altec body. GPA reviewed this request and determined that the revised submission still met the requirements of the original bid specifications.

Your allegations that the bucket trucks already delivered by Mid Pac did not meet the bid specifications are not supported by any factual basis, and your protest is denied on these grounds.

EXHIBIT

E


GPA reviewed the bid packages and provided a notice of intent to award to the lowest responsible and **responsive** bidder. After the default of the original low bidder, GPA made an award to the next lowest responsible and responsive bidder based on the bid abstract. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bids. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2).

2. In addition, 5 GCA § 5425, **Authority to Resolve Protested Solicitations and Awards.**

(a) Right to Protest, provides that "Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto. " It is clear that this protest was not received in a timely manner, as the bucket trucks were already delivered to GPA by Mid Pac at the time of the protest.

Morrigo Equipment LLC is hereby ON NOTICE that this is the Guam Power Authority's final decision concerning Morrigo Equipment LLC's August 20, 2013, protest for the above described IFB. You are hereby advised that Morrigo Equipment LLC has the right to seek judicial review.

Sincerely,


JOAQUIN C. FLORES, P.E.
General Manager