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RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS
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 FILE NO OPA-PA: 13-015

Attorneys for Appellant
 Morrico Equipment, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of)	Docket No. OPA-PA-13-015
)	
)	MOTION RE: OPA PRE-HEARING
MORRICO EQUIPMENT, LLC,)	EVIDENTIARY RULING; OR, TO
)	AUTHORIZE REQUEST TO ADMIT
Appellant.)	TO GPA; OR, AN ORDER TO DEPOSE
_____)	AUTHENTICATING WITNESS

Morrigo Equipment, LLC (“Morrigo”), hereby requests that the Office of the Public Auditor (“OPA”), through its Hearing Officer, make a pre-hearing ruling on the authentication and admission into evidence of **Exhibits A and B** attached hereto for purposes of a hearing in this matter. In lieu of a pre-hearing ruling, Morrigo requests that the Hearing Officer order that Morrigo be allowed to submit a request for admission to the Guam Power Authority (“GPA”), seeking an admission as to the authenticity of the attached exhibits and that they may be accepted into evidence at a hearing of this matter. Finally, if those methods do not result in the evidentiary ruling requested, that the Hearing Officer order that Morrigo may depose an off-island witness for the purpose of authenticating the attached exhibits and to establish a foundation for admission of the exhibits into evidence at a hearing of this matter.

The attached exhibits illustrate that Terex Utilities, Inc., through Terex South Dakota, Inc. (“Terex”), terminated its distributorship agreement with Mid-Pac Far East (“Mid-Pac”), effective on January 4, 2013, and that Mid-Pac acknowledged that termination. This is relevant to the issues on

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appeal herein as Mid-Pac advised GPA in a January 31, 2013, letter that it had switched manufacturers in order to meet GPA's newly imposed 120 day delivery requirement for the bucket trucks that are the subject of the Invitation for Bid on appeal herein. *See*, November 8, 2013, Procurement Record, Tab 8.

I. The OPA is not Bound by Technical Rules of Evidence.

2 GAR § 12108(d) provides that "Hearings [before the OPA] shall be as informal as may be reasonable and appropriate under the circumstances and shall not be bound by statutory rules of evidence or by technical or formal rules of procedure" That same provision also states that "[t]he testimony presented shall be written, oral or otherwise."

The attached exhibits illustrate that Terex terminated its distributorship agreement with Mid-Pac as of January 4, 2013. Mid-Pac acknowledged that termination in a reply email to Terex. It is within the discretion of the Hearing Office to accept the attached exhibits into evidence for purposes of a hearing of this matter under the foregoing regulatory provisions and Morrico moves the Hearing Officer to enter a ruling authorizing the receipt of the attached exhibits into evidence for purposes of the hearing.

II. Alternatively, Morrico Requests that the OPA Authorize the Submission of Requests to Admit to GPA to Authenticate the Attached Exhibits.

2 GAR § 12109(a) provides that the Hearing Officer may "[h]old informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's own

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motion.” Similarly, 2 GAR § 12109(b) authorizes the Hearing Officer to “[r]equire parties to state their positions with respect to the various issues in the proceeding.”

Pursuant to the foregoing authority and in line with Rule 36 of the Guam Rules of Civil Procedure governing requests for admission, Morrico requests that the Hearing Officer authorize Morrico to submit a request for admissions to GPA requesting that GPA admit to the authenticity of the attached exhibits and to the receipt of them into evidence at a hearing of this appeal. And, as provided by 2 GAR § 12104(c)(7), Morrico asks that the Hearing Officer order that GPA respond to the request for admissions within five (5) days of service.

III. In Lieu of the Foregoing, Morrico Requests an Order Authorizing the Deposition of an Off-Island Witness for the Purpose of Authentication.

Should it be necessary, Morrico requests an order from the Hearing Officer authorizing it to depose Michael Tilden, International Sales Manager of Terex, who corresponded with Mid-Pac with respect to the termination of the Terex/Mid-Pac distributorship agreement. Mr. Tilden appears to be a resident of Oregon. The sole purpose of this brief deposition would be to authenticate the correspondence between Terex and Mid-Pac with respect to the termination of their distributorship agreement.

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CONCLUSION

Based on the foregoing, Morrigo respectfully requests that the OPA through its Hearing Officer grant the discovery motion herein and in order to authenticate the attached exhibits for purposes of a hearing of this appeal.

Dated this 29th day of November, 2013.

DOOLEY ROBERTS & FOWLER LLP

By:



KEVIN J. FOWLER
Attorneys for Appellant
Morrigo Equipment, LLC



January 4, 2013

Mid Pac Far East
825 Tiyan Parkway
Barrigada, Guam 96921 USA

Re: Termination of Distribution Agreement (“Agreement”)

The Purpose of this letter is to act in accordance with the provisions of the (“Distribution agreement”) reached between **Terex-Telelect, Inc.**, (“Terex” or Terex Utilities, Inc.) and **Mid Pac Far East**, (“MPFE”) dated July 6, 2009 for distribution of Terex-Telelect aerial devices and digger derrick products in Guam (the “Distributorship”).

Per the Distribution agreement, Terex-Telelect is hereby terminating the Distributorship of MPFE effective immediately, due to MPFE sales inactivity.

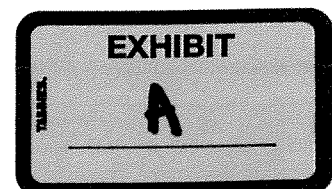
If you have any questions regarding this matter, please contact me directly.

Best Regards,

Michael Tilden

Michael Tilden

International Sales Manager
Terex South Dakota, Inc.
DBA – Terex Utilities, Inc.



Kevin Fowler

From: Mark Cruz [mcruz@midpacfareast.com]
Sent: Thursday, January 03, 2013 4:01 PM
To: Tilden, Michael
Cc: 'STEPHEN BONFIELD'
Subject: RE: MPFE distributor termination

Dear Michael,

MPFE is in receipt of the Termination Letter.

Best Regards,

Mark S. Cruz

Sales Manager
Mid Pac Far East, LLC
Office: (671) 632-5160
Mobile: (671) 486-2789
Fax: (671) 632-5167

From: Tilden, Michael [mailto:Michael.Tilden@terex.com]
Sent: Friday, January 04, 2013 9:57 AM
To: mcruz@midpacfareast.com
Cc: Tilden, Michael
Subject: MPFE distributor termination

Sir,

Effective January 4, 2013 - MPFE is being terminated as a distributor for Terex Utilities, Inc.

However, as a chassis supplier to Guam customers.

If MPFE requests a quotation from Terex South Dakota, Inc., for an installed product on a MPFE supplied chassis, (for Guam). Terex South Dakota, Inc., will provide MPFE a quotation.

Please respond with an acknowledgement - receipt of termination letter.

Best Regards,

Michael Tilden
International Sales Manager
Terex South Dakota, Inc.
T 503.924.1551
F 503.684.1793
M 775.722.3882
E michael.tilden@terex.com

