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PROCUREMENT APPEALS
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Attorneys for Appellant
Morrigo Equipment, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of)
MORRICO EQUIPMENT, LLC,) **APPELANT'S COMMENTS ON**
Appellant.) **AGENCY REPORT**
Docket No. OPA-PA-14-011

Morrigo Equipment, LLC ("Morrigo"), hereby submits its comments on the GSA Agency Report.

In its Agency Report, the GSA's answer to the allegations of the appeal merely states that:

As stated in our response to the protest (Tab 2), this appeal attempts to disallow the authority of the Chief Procurement Officer from entering into any settlement with a party to the action. Morrigo did not file with the Office of Public Accountability when the matter was filed and now is claiming that they should have been given the right to protest the agreement.

This statement does not constitute a "detailed Agency Report" that "shall be fully responsive to the allegations of the Appeal" as required by 2 GAR §§ 12104(c)(3) and 12105(g). In fact, Morrigo's protest said nothing about settlement agreements or whether the GSA has authority to enter into them.

Instead, Morrigo protested the GSA's intent to award a procurement contract to Triple J. The basis for that protest was that the GSA had rejected Triple J's bid as non-responsive for failure

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to include mandatory drawings and seating plans, which were not minor informalities that could be waived. Morrigo further protested the proposed award to Triple J because the GSA had advised Morrigo that it was going to re-bid the IFB. Additionally, Morrigo objected to the proposed award because the GSA had denied Triple J's protest and Triple J failed to timely file an appeal to the OPA. Finally, Morrigo protested the proposed award because it appears that the Blue Bird buses offered by Triple J also use screws on exterior components instead of rivets.

The GSA rejected Morrigo's bid because of the rivet only specification. Attached hereto as **Exhibits A, B and C** are photos of Blue Bird buses in use on Guam by Scuba Company and the photos show rub rails attached with screws. Blue Bird also produced a video that can be found on YouTube at: (<http://www.youtube.com/watch?v=-Wx11hn7d58>), which shows the manufacturing process for Blue Bird school buses. At 2:34 of the video, the manufacturing process shows the installation of exterior rub rails with screws. Right after that, the video shows the installation of interior ceiling panels with the use of a rivet gun. Accordingly, the Blue Bird buses offered by Triple J do not appear to meet the exterior rivet specification which the GSA utilized as a basis for rejecting the Morrigo bid. If the Morrigo bid had to be rejected for not meeting the exterior rivet specification, then the Triple J bid must be rejected on that same basis.

Assuming that Blue Bird only uses rivets to install exterior components, this would appear to be a proprietary feature or a process peculiar to but one manufacturer. *See, Exhibit D*, September 18, 2014, email from GSA's Anita Cruz to DPW's Paul Cepeda ("DPW was to do their specifications over because of the 'Rivets' that only Blue Bird does rivets only which makes it proprietary."). And, attached hereto as **Exhibit E**, is an email from DPW director Carl Dominguez

acknowledging that the DPW does not have evidence showing screws to have inferior anti-corrosive properties or that they are not durable.

The GSA also comments in its agency report that "Morrigo did not file with the Office of Public Accountability when the matter was filed and now is claiming that they should have been given the right to protest the agreement." The GSA conveniently omits that it is charged with providing notice to Morrigo of the Triple J appeal to the OPA. *See*, 2 GAR § 12104(c)(2) ("The Chief Procurement Officer ... shall give notice of the Appeal ... to all Interested Parties ... and shall communicate to the Public Auditor the identities and addresses of said parties."). The GSA also seems to argue that Morrigo had no right to protest a proposed award to Triple J when the GSA itself rejected the Triple J bid for being non-responsive and, further, denied the Triple J protest for the same reason. But bidders have a right to protest proposed awards that violate the procurement code. An award to Triple J would be in violation of the procurement code and Morrigo has every right to protest such an award.

Respectfully submitted this 12th day of December, 2014.

DOOLEY ROBERTS & FOWLER LLP

By:



KEVIN J. FOWLER
Attorneys for Appellant
Morrigo Equipment, LLC



EXHIBIT
A



Aluminum Window Products

EXHIBIT
B



EXHIBIT

C



Anita Cruz <anita.cruz@gsa.guam.gov>

GSA-059 and 065-14

3 messages

Paul N.I. Cepeda <paul.cepeda@dpw.guam.gov>

Thu, Sep 18, 2014 at 9:01 AM

To: Claudia Acfalle <claudia.acfalle@gsa.guam.gov>, Anita Cruz <anita.cruz@gsa.guam.gov>, Robert Kono <robert.kono@gsa.guam.gov>

Cc: Carl Dominguez <carl.dominguez@dpw.guam.gov>, "John Weisenberger, AG" <jweisenberger@guamag.org>, "Todd A. Gillan" <todd.gillan@dpw.guam.gov>

Good Morning All,

Just following up on the status on the above mentioned bid which are the school buses and heavy equipment bid.

On our last meeting it was discussed that on the heavy equipment bid some of the equipment can be awarded while others may be canceled and re-bid.

Regarding the school buses when do you want DPW to re-submit the specs with or without changes? Or is GSA going to make the changes and re-submit for bid?

Thanks
Paul

Anita Cruz <anita.cruz@gsa.guam.gov>

Thu, Sep 18, 2014 at 10:40 AM

To: "Paul N.I. Cepeda" <paul.cepeda@dpw.guam.gov>

Hi Paul

DPW was to do their specifications over because of the "Rivets" that only Blue Bird does the rivets only which makes it proprietary. But at this time no bids will be process until the new fiscal year when system opens. I am working on the heavy equipment but very short of staff for closing out but I will try and get this done today... Thanks for your patience.

Anita

[Quoted text hidden]

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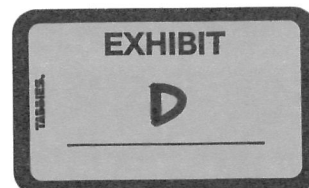
Anita Cruz
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Paul N.I. Cepeda <paul.cepeda@dpw.guam.gov>

Thu, Sep 18, 2014 at 10:54 AM

To: Anita Cruz <anita.cruz@gsa.guam.gov>

Hi Anita,



Ok well talk to Todd and the Director on making that change..and yes I very much understand your shortage of personnel especially towards the end of the Fiscal year.. thanks for the update

Paul

[Quoted text hidden]

RIVETS versus SCREWS:

FMVSS is silent on rivets and screws. This is a manufacturing difference. DPW mechanics prefer anti-corrosion rivets to anti-corrosion screws as the more durable fastener for the body of the buses. The 2005 TBB buses were all assembled with anti-corrosion screws. I have seen some of the 2005 TBB buses and saw no evidence of corrosion or fastening failure. Only additional time can tell if rivets are, in fact, more durable than the screws. Our oldest bus, a 23 year old, is fastened with rivets.

With regards to Mr. Jones' assertion that MORRICO acted fraudulently or in bad faith and that Triple J was the most responsible bidder, I will leave that up to Claudia or higher authority to decide.

I reiterate that I submitted my April 11, 2013 memorandum to Claudia that the TBB buses exceed FMVSS minimum requirements and therefore, in the best interests of the Territory to accept them, but, at that time, not being aware of the rivets versus screw issue. My motivation was to have the badly needed new school buses ready for the 2013-2104 school year which starts on AUG 19, 2013.

Please let me know if you need more information than I have provided up to this point. Best regards.

Carl V. Dominguez

Director

Department of Public Works

Government of Guam

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John Weisenberger <jweisenberger@guamag.org>

Tue, Jun 18, 2013 at 4:23 PM

To: Claudia Acfalle <claudia.acfalle@gsa.guam.gov>, Robert Kono <robert.kono@gsa.guam.gov>

Cc: Paul Llanes <paul.llanes@gsa.guam.gov>

