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**BEFORE THE PUBLIC AUDITOR  
PROCUREMENT APPEALS  
TERRITORY OF GUAM**

8 IN THE MATTER OF  
9 MORRICO EQUIPMENT, LLC,

10 Appellant,

11 and

12 GUAM SOLID WASTE AUTHORITY  
13 UNDER THE MANAGEMENT OF  
14 FEDERAL RECEIVER GERSHMAN,  
15 BRICKNER AND BRATTON, INC.,

Purchasing Agency.

) **APPEAL NO: OPA PA-14-010**

) **HEARING BRIEF**

16 Comes now the Guam Solid Waste Authority (“GSWA”) by and through its counsel and  
17 submits its Hearing Brief pursuant to the Scheduling Order in the above referenced matter.

18 **ISSUES ON APPEAL**

- 19 I. Whether Morrico Equipment, LLC (“Morrico”) submitted an untimely protest.
- 20 II. Whether GSWA properly denied Morrico’s protest based on allegations that  
21 inclusion of the cab-forward specification was arbitrary, capricious, and an abuse of discretion.
- 22 III. Whether GSWA properly denied Morrico’s protest based on the allegation that  
23 the cab-forward specification unduly restricts competition.

24 **FACTS**

25 Morrico’s protest and this appeal is based on GSWA’s inclusion of a cab-forward design  
26 specification in IFB GSWA001-15 published on September 18, 2014. Morrico knew of the cab-  
27 forward specification on September 19, 2014 when it picked up the IFB package. Morrico  
28 should have known that GSWA would not omit the cab-forward design specification when it

1 was unambiguously told so at the pre-bid conference on September 23, 2014. Morrico did not  
2 file its protest until October 9, 2014.

3 The cab-forward design was included as a specification based on the knowledge,  
4 experience, and expertise of GSWA in operating both cab-forward and conventional cab refuse  
5 trucks in Guam's roads and neighborhoods. The cab-forward trucks have markedly greater  
6 maneuverability, visibility, and overall safety and efficiency, than conventional cab trucks,  
7 necessary to navigate Guam's roads and neighborhoods.

8 The specified the design of the cabs must be cab-forward. The bid did not specify any  
9 particular brand. The bid was properly noticed and open to the entire world seeking a delivery  
10 date of 240 days within award. Several manufacturers offer trucks with the cab-forward design,  
11 including Freightliner which is offered by Morrico. There are also other vendors on-island who  
12 offer cab-forward trucks.

### 13 MEMORANDUM

#### 14 **I. MORRICO'S PROTEST WAS PROPERLY DENIED AS UNTIMELY.**

15 Protests filed over fourteen (14) days after the prospective bidder knew or should have  
16 known of the facts giving rise thereto are untimely and must be dismissed. 5 G.C.A. § 5424(a);  
17 2 G.A.R. § 12103. See also *TRC Environmental Corp. v. Office of the Public Auditor*, Superior  
18 Court of Court Case No. SP160-07, Decision and Order, Nov. 24, 2008. The fact giving rise to  
19 Morrico's protest was the inclusion of the "cab-forward" design specification. At the very latest,  
20 Morrico should have known that GSWA would not accept a conventional cab design at the pre-  
21 bid conference on September 23, 2014.

22 Morrico argues it should not have known GSWA would *not* change or omit the cab  
23 forward specification in its entirety until GSWA put this in writing. There is no law to support  
24 this, but Morrico cites to language in the IFB. Language in the IFB cannot change a standard  
25 required by law or toll a statute of limitations. Morrico cannot plead ignorance because it was  
26 waiting for written reaffirmation of what it *already knew*. Such an interpretation would render  
27 the constructive notice standard meaningless. Therefore, the OPA should find that the protest  
28 was untimely and properly denied.

1 **II. THE CAB FORWARD SPECIFICATION IS JUSTIFIED AND NECESSARY.**

2 The bases for Morrico's protest of the cab-forward specification was that the cab-  
3 forward specification was "arbitrary, capricious and an abuse of discretion." (Protest, Notice of  
4 Procurement Appeal Exhibit D, Nov. 6, 2014.) Morrico argued that there could be no  
5 "substantive basis" for the specification, and the cab forward specification "has several  
6 disadvantages to the conventional cab design[.]" *Id.* Morrico's arguments were meritless.  
7 Based on GSWA's years of experience in using both conventional cab and cab-forward refuse  
8 trucks in Guam's roads and neighborhoods, GSWA knew the cab forward specifications have  
9 greater visibility, maneuverability, and consequently, safety overall, versus conventional cab  
10 trucks. Thus, GSWA was justified in including the cab-forward specification as a necessary to  
11 meet the needs of GSWA to safely and efficiently collect trash.

12 **III. THE CAB FORWARD SPECIFICATION DOES NOT UNDULY RESTRICT**  
13 **COMPETITION.**

14 Finally, Morrico has no conceivable basis for the claim that the cab-forward design  
15 specification unduly restricts competition. GSWA did not request a brand. The cab-forward  
16 design is not proprietary to any manufacturer or dealer. The cab-forward design is offered by  
17 numerous manufacturers and dealers, both locally and globally. It is even apparently available  
18 to Morrico through its dealer Freightliner. Therefore, Morrico's argument cannot stand.

19 **CONCLUSION**

20 Morrico's protest was properly dismissed because it was untimely. Even if Morrico's  
21 protest were timely filed, there was no merit to the basis for the protests. There was ample  
22 justification for the cab-forward design specification, and such a specification does not unduly  
23 restrict competition. GSWA respectfully requests the OPA find the protest was properly denied  
24 and accordingly deny Morrico's appeal.

25 Respectfully submitted this 12<sup>th</sup> day of January, 2015.

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Federal Receivership of Gershman, Brickner & Bratton*