



Office of the Attorney General

Elizabeth Barrett-Anderson

Attorney General of Guam

Litigation Division

590 S. Marine Corps Drive

Tamuning, Guam 96913 • USA

(671) 475-3324 • (671) 472-2493 (Fax)

www.guamag.org

Attorneys for the Government of Guam

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 1/23/15

TIME: 9:50 AM PM BY: AG

FILE NO OPA-PA: 14-011/012

THE OFFICE OF PUBLIC ACCOUNTABILITY

IN THE APPEALS OF

MORRICO EQUIPMENT, LLC,

Appellant

) Docket No. OPA-PA-14-011

) Docket No. OPA-PA-14-012

FORMAL BRIEF

COMES NOW, the General Services Agency of the Government of Guam, (hereafter referred to as "GSA"), by and through its counsel of record, Shannon Taitano, hereby submits its Hearing Brief pursuant to the Order Consolidating Appeals and Scheduling Order.

ARGUMENT

GSA respectfully requests the Office of Public Accountability to dismiss Morrico Equipment's (hereafter referred to as "Morrico") appeal in its entirety. GSA maintains its authority to settle and resolve a protest of an aggrieved bidder. Pursuant to the terms of the GSA and Triple J Motors (hereafter referred to as "Triple J") Settlement Agreement, Morrico's appeal is not ripe. Finally, Morrico's appeal is untimely.

ORIGINAL

A. GSA has Broad Authority to Resolve Protests via Mutual Agreement.

Morrigo argues that GSA settled with Triple J after informing Morrigo it was going to cancel the procurement and rebid. However, Triple J appealed GSA's determination that Triple J's bid was rejected for nonconformance with the specifications, and GSA's decisions to cancel and rebid the procurement.

The Chief Procurement Officer has the authority to settle and resolve a protest. 5 G.C.A. § 5425(b). Pursuant to this authority, GSA agreed to settle Triple J's protest in an effort to quickly acquire school buses for the Island's school children.

According to the terms of the Settlement Agreement, GSA agreed to evaluate Triple J's schematic to determine whether it complies with the bid specifications. If it is determined that the schematic does not meet the bid specifications, no award will be issued to either Triple J or Morrigo and GSA will cancel and rebid the procurement.

B. Morrigo's Appeal is Not Ripe.

Since an award has not been issued in IFB No. GSA-065-14 School Bus (60 Passengers), Morrigo's appeal is not ripe. "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed, may not occur at all."

Davis v. Guam, No. CIVIL CASE 11-00035, 2013 WL 204697, at *7 (D. Guam Jan. 9, 2013)

As mentioned, no award will be issued unless Triple J's schematic conforms to the bid specifications. If no award is issued, GSA will cancel and rebid the procurement. Until such time an award is issued, there is no controversy. Therefore, Morrigo's protest is not ripe and should be dismissed.

////

C. Morrico's Protest is Untimely.

Morrigo failed to file a protest within the time required from when it knew of the facts giving rise to its protest. A protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto. 5 G.C.A. 5425(a). Pursuant to 2 GAR § 9101(c)(1), protests filed after the fourteen (14) day period after the protestor knows or should have known of the facts giving rise to the protest shall not be considered.

Morrigo protests any award to Triple J because its bid was nonresponsive for failure to submit descriptive literature. Morrigo protests GSA's rejection of its bid for failure to meet the exterior rivet specification. These protests are untimely and should be dismissed.

Morrigo was aware of Triple J's bid on the bid opening date on August 12, 2014. On October 18, 2014, Morrigo reviewed Triple J Motor's Bid Packet. Further, Morrigo was contacted by the government on two separate occasions prior to the settlement agreement which was signed on November 7, 2014. Clearly, the fourteen days have lapsed. Therefore, Morrigo's protests are untimely and should be dismissed.

The same is true with Morrigo's protest of GSA's rejection of its bid for failure to meet bid specifications. On September 9, 2014, GSA notified Morrigo that its bid was rejected due to nonconformity with an exterior rivet specification. Morrigo argues it thought GSA would cancel and rebid the procurement. However, Triple J filed an appeal. Morrigo didn't protest GSA's determination that its bid was nonconforming until November 21, 2014. This protest is also untimely and should be dismissed.

////

////

CONCLUSION

Based on the foregoing argument, the OPA should deny Morrico's protest and dismiss this matter.

Dated this 23 day of January, 2015.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General

By:



SHANNON TAITANO
Assistant Attorney General