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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**

) **GSA'S RESPONSE TO MORRICO'S
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 Response to Morrico's Brief pursuant to the Scheduling Order.

A. Morrigo's Protest is Not Timely.

Morrigo claims it timely filed its protest when it had an idea that GSA and the Attorney General's Office were agreeing to award a school bus contract to Triple J. The law requires a written protest within 14 days after the aggrieved bidder knew or should have known of the facts

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giving rise to the protest. *See* 5 G.C.A. § 5425(a). However, Morrico should have known within 14 days after August 12, 2014 when the bids were opened in IFB GSA065-14 (hereinafter referred to as "IFB") that Triple J did not submit descriptive literature requested in the IFB. If for some reason Morrico was not able to ascertain these facts once the bids were open to the public, then Morrico definitely knew and should have known after their bid was rejected and after they reviewed Triple J's bid.

Morrigo should have protested within 14 days from September 9, 2014 when it received notice that their bid was rejected that they disagreed with GSA's determination that their bid was noncompliant. Morrico should have protested within 14 days from October 14, 2014 when their representatives reviewed Triple J's bid to determine why Triple J's bid was rejected. Morrico failed to intervene in October when they were aware of Triple J's appeal. To permit Morrico to protest after the statutory time requirements would only cause undue delay in the procurement of school buses that are direly needed to replace the government's aging fleet.

Morrigo claims they filed their protest when they had an idea that GSA and the Attorney General's Office were agreeing to award a school bus contract to Triple J. GSA and the Attorney General's Office were not agreeing to award a school bus contract to Triple J. Any award to Triple J and Morrico is contingent upon GSA's determination that Triple J's schematics conform to the bid specifications. An award has not been issued and may not be issued if GSA determines that Triple J's schematics are nonconforming. Therefore, Morrico's protest of an award to Triple J is not ripe.

Morrigo argues GSA has no authority to permit Triple J to submit its schematics. GSA has broad authority to settle procurement protests. Triple J protested GSA's determination that their bid was nonresponsive and their omission was an oversight and not a material mistake.

Rather than litigate whether Triple J's failure to submit a drawings/seating plans for the buses was a "minor informality" that could be waived pursuant to the procurement rules, the parties agreed to resolve the matter in the public's best interest.

B. The Public Auditor Does Not Have Statutory Authority to Set Aside Settlement Agreements.

Morrigo alleges that the Settlement Agreement illustrates that GSA intended to award a procurement contract to Triple J. This is not true. GSA did not expect Triple J to file a protest. Both bidders were notified the procurement would be cancelled and rebid. The procurement record shows that GSA was in the process of preparing a rebid when they received notice of Triple J's protest.

As mentioned, GSA has broad settlement authority. GSA is authorized to resolve protests at any time prior to the commencement of a court proceeding. See 5 G.C.A. § 5425(b). Therefore, Morrigo's argument that GSA had no authority to settle when Triple J appealed GSA's decision to deny their protest because there was no longer any protest pending before GSA is baseless.

Morrigo argues the Office of Public Accountability (hereafter referred to as "OPA") can set aside settlement agreements pursuant to her authority to review and determine any matter properly submitted. However, there is nothing expressed in law that authorizes the OPA to set aside settlements. As such, it is not a matter that could be properly submitted for the OPA's review and determination.

Even if it is determined that the OPA has implicit authority to set aside settlement agreements, settlement agreements should not be set aside lightly. Morrigo has not shown that the Settlement Agreement was obtained fraudulently or through similar compelling

circumstances. Since this settlement was made in good faith, the Settlement Agreement should not be set aside.

CONCLUSION

Based on the foregoing argument, the OPA should deny Morrigo's protest and dismiss this matter so as to not further and unnecessarily delay the procurement of school buses.

Dated this 5th day of February, 2015.

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