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8 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
PROCUREMENT APPEAL

9
10 **In the Appeal of**)

Docket No. OPA PA-15-011

11 **MID PAC FAR EAST,**)

APPELLANT'S HEARING BRIEF

12 **Appellant.**)
13 _____)

14 Appellant **MID PAC FAR EAST** ("MPFE"), hereby submits its Hearing Brief for the
15 December 1, 2015 hearing in this matter.

16 This appeal concerns the invitation for bid on GSA-093-15, a contract to provide
17 miscellaneous item and school bus parts.

18 The basis of MPFE's protest is that a mistake in the form of a typographical error
19 occurred in the transcription of the unit price in its bid and that the mistake as well as the
20 intended bid was evident on the face of the bid. In response, GSA has argued that the unit price
21 must govern, regardless of mistakes, because item 2(c), of the bid instructions, located on page
22 26, states that "[i]n the event of discrepancies between a unit price and extended price, the unit
23 price will be presumed to be correct."
24

25 **A. THE INVITATION FOR BID CANNOT OVERRIDE OR SIDESTEP GUAM PROCUREMENT**
26 **REGULATIONS**

27 GSA's argument fails to account for the possibility that the unit price would be subject
28 to a mistake. In that event, Guam's procurement regulation governing mistakes still governs.

1 There is no exception in the statute or the regulations that permits the GSA to ignore portions
2 of the Guam procurement law or write out portions of the law through the instructions segment
3 of an invitation for bid. Thus, while the GSA may have included instructions stating that the
4 unit price would govern in the event of a discrepancy of between the unit price and the extended
5 price, a mistake occurring in the unit price must still be corrected if the requirements of 2 GAR
6 Division 4 Section 3109(m)(4)(C) are met.

7 **B. GUAM PROCUREMENT LAW PERMITS THE CORRECTION OF MISTAKES**

8 Guam procurement regulation 2 GAR Division 4 Section 3109(m)(4)(C) states that:

9 (C) Mistakes where intended correct bid is evident. If the mistake and the
10 intended correct bid is clearly evident on the face of the bid document, the bid
11 shall be corrected to the intended correct bid and may not be withdrawn.
12 Examples of mistakes that may be clearly evident on the face of the bid
13 document are typographical errors, errors in extending unit prices, transportation
14 errors, and arithmetical errors.

15 Therefore, in order for an agency or the OPA to recognize and correct a mistake, (1) the mistake
16 must be clearly evident on the face of the bid document and (2) the intended correct bid must
17 be clearly evident on the face of the bid document. One example of a mistake cited by the rule
18 is a typographical error.

19 **C. A MISTAKE IN THE UNIT PRICE IS CLEARLY EVIDENT ON THE FACE OF THE MPFE
20 BID SUBMITTAL**

21 There are several indications on the face of the MPFE bid submittal that the unit price
22 for line item 79.1 was the subject of a typographical error.

23 First, in every instance in the MPFE bid document where a unit price or price extension
24 is noted to be a whole dollar figure, the entry is marked with zeroes following a decimal. For
25 example, the unit priced for line item 82.1, line item 86.1, and line item 88.1 are marked as
26 “\$6.00”, “\$700.00”, and “455.00”, respectively. Line item 79.1 stands alone as the only line
27 item unit price entry that defies the format used in the rest of the line item unit price entries.
28

1 The unit price for line item 79.1 is entered as “\$537.”, with the decimal at the end of the figure
2 and no zeroes following the decimal. This discrepancy alone should have alerted GSA to the
3 fact that a mistake in the form of a typographical error was made.

4 Second, the extended price for line item 79.1 in the MPFE bid submittal reflects the unit
5 price of \$5.37 multiplied by the 50 units requested by the GSA. The extended price is listed as
6 \$268.50, not the exorbitant price of \$26,850.00 that OPA calculated and used to replace
7 MPFE’s extended price. This discrepancy between the unit price and the extended price should
8 have alerted GSA to the fact that a mistake in the form of a typographical error was made.
9

10 Third, Morrico, the only other bidder on line item 79.1, included a unit price of \$9.04
11 in its bid submittal. The fact that the unit price, as it was understood by GSA to be \$537.00,
12 was nearly sixty times the price offered by the only other bidder should have alerted GSA to
13 the fact that a mistake in the form of a typographical error was made.

14 Fourth, the fact that including the recalculated extended price for line item 79.1 in the
15 MPFE bid, as GSA did, resulted in a total bid price that was \$26,581.50 greater than that with
16 the correct extended price thereby rendering the bid bond submitted by MPFE insufficient,
17 should have alerted GSA to the fact that a mistake in the form of a typographical error was
18 made. Oddly, GSA appears to be taking the position that it is more plausible MPFE erred by
19 submitting a severely insufficient bid bond rather than that it erred by committing a
20 typographical error in the unit price.
21

22 Lastly, the mistake was clearly evident given that common sense would dictate that one
23 foot of heater hose for a bus at a 3/4 inch diameter could not possibly cost over 100 times that
24 of one foot of heater hose for a bus at a 5/8 inch diameter. Line item 80.1 requests heater hose
25 at a 5/8 inch diameter and the unit price included in the MPFE bid was \$5.35. The fact that line
26 item 79.1 requested nearly the identical product as line item 80.1 and the unit price for 79.1
27
28

1 appeared to GSA to be listed at over 100 times the unit price of line item 80.1 should have
2 alerted GSA to the fact that a mistake in the form of a typographical error had been made.

3 Instead of taking all of the facts noted above into account and concluding that the unit
4 price for line item 79.1 was the subject of a typographical error, GSA went out of its way to
5 exacerbate that typographical error by calculating an absurdly disproportionate extended price,
6 using that inflated price per roll to recalculate the total price of the bid, then recalculating a new
7 bid bond amount, and declaring the bid bond insufficient, thus disqualifying the entire bid
8 submitted by MPFE.
9

10 Rather than recognizing the clear mistake for what it was, GSA bent over backwards to
11 disqualify MPFE's bid in its entirety. As described below, GSA's decision, if sustained, will
12 cost the taxpayers of Guam \$118,746.41.

13 **D. THE INTENDED UNIT PRICE IS CLEARLY EVIDENT ON THE FACE OF THE MPFE BID**
14 **SUBMITTAL**

15 As noted above, the unit price for line item 79.1 was simply entered with a misplaced
16 decimal. The fact that the unit price for line item 79.1 did not follow the same format as the
17 rest of the unit prices in the MPFE bid submittal should have alerted GSA to the fact that a
18 mistake occurred and that the decimal should have been moved two places to the left to result
19 in a unit price of \$5.37. The correction could have also been checked by calculating backwards
20 from the extended price to confirm that the correct unit price was \$5.37 and that the decimal
21 had merely been moved as the result of a typographical error. No extraneous information would
22 have been needed to find the correct bid number. Therefore, the correct price was clearly
23 evident on the face of the bid document.
24

25 **E. GSA'S DECISION TO REJECT MPFE'S BID IN ITS ENTIRETY BY IGNORING THE**
26 **OBVIOUS TYPOGRAPHICAL ERROR WILL COST THE TAXPAYERS OF GUAM**
\$118,746.41

27 GSA's decision runs afoul of 5 G.C.A. § 5001(b)(5), which provides that one of the
28

1 underlying principles and policies of the Guam Procurement Law is “to provide increased
2 economy in territorial activities and to maximize to the fullest extent practicable the purchasing
3 value of public funds of the Territory.” Given that MPFE’s bid has been rejected in its entirety,
4 all of the line items for which MPFE was the lowest bidder will now go to the next lowest
5 bidders.

6 A spreadsheet in which the difference in the total price of GSA-093-15 is calculated if
7 the GSA’s decision is upheld and the MPFE bid is disqualified is marked as Exhibit “1” in
8 MPFE’s list of exhibits. As calculated, if the OPA upholds GSA’s decision to ignore the
9 obvious typographical error and go out of its way to disqualify MPFE’s bid in its entirety will
10 cost the taxpayers of Guam \$118,746.41.

11
12 **CONCLUSION**

13 MPFE respectfully requests that that the Office of the Public Auditor determine that the
14 “\$537.” per foot price was a mistake that was clearly evident on the face of the bid document,
15 determine that the intended correct bid price, which was also clearly evident on the face of the
16 bid document, was \$5.37, order that the bid document be corrected to the intended correct bid
17 of \$5.37 per foot, and overturn GSA’s rejection of MPFE’s bid on the basis of insufficient
18 security.
19

20 **DATED** this 24th day of November, 2015.

21 **BLAIR STERLING JOHNSON & MARTINEZ**
22 A PROFESSIONAL CORPORATION

23 BY: 
24 **R. MARSIL JOHNSON**
25 *Attorneys for Appellant Mid Pac Far East*

CERTIFICATE OF SERVICE

1
2 I, R. MARSIL JOHNSON, do hereby certify that on the 24th day of November, 2015, I
3 caused a copy of the **APPELLANT'S HEARING BRIEF** to be served upon the following, via hand
4 delivery:
5

6 **Purchasing Agency:** Nicolas Toft, Esq.
7 Assistant Attorney General
8 Civil Litigation Division
9 590 S. Marine Corps. Dr.
10 Tamuning, Guam 96913

11 **DATED** this 24th day of November, 2015.

12 **BLAIR STERLING JOHNSON & MARTINEZ**
13 A PROFESSIONAL CORPORATION

14 BY: 
15 **R. MARSIL JOHNSON**
16 *Attorneys Appellant Mid Pac Far East*

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