



OFFICE OF THE PUBLIC AUDITOR

**Guam Fire Department
Emergency Procurement of Fire Trucks
Pursuant to Public Law 27-99**

Legislative Mandate

**OPA Report No. 05-01
May 2005**

Distribution:

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OFFICE OF THE PUBLIC AUDITOR

EXECUTIVE SUMMARY

Guam Fire Department Emergency Procurement of Fire Trucks
Pursuant to Public Law 27-99
Report No. 05-01, May 2005

This summary represents the results of our observation of the emergency procurement of two fire trucks by the Guam Fire Department (GFD) and General Services Agency (GSA). Pursuant to Public Law (P.L.) 27-99, the Office of the Public Auditor (OPA) was designated as the observer for this procurement process. Our objective, as an observer, was to determine whether GFD's procurement request and GSA's procurement process were conducted with due diligence.

In December 2003, the GFD Chief (Chief) requested and received an emergency declaration for the purchase of three fire trucks. In two days, the emergency purchase was awarded to Mid-Pacific Far East for \$734,913. Morrico Equipment Corporation (Morrico), another local fire truck distributor, protested the emergency purchase and a lawsuit followed.

In March 2004, the Superior Court of Guam issued a preliminary injunction (Civil Case No. CV0152-04) in favor of Morrico and GSA was enjoined from taking any actions to procure the fire trucks. The court further found that "the written determination of emergency by the Guam General Services Agency and the Guam Fire Department dated December 31, 2003, failed to comply with requirements of 5 G.C.A. §5425 for the procurement of Fire Trucks in this case and any actions taken in furtherance of the procurement is void pursuant to §5425(g)." To date, there have been no further proceedings on this case.

In June 2004, the Chief testified on Bill 295, which would appropriate \$600,000 and waive procurement requirements for the emergency purchase of fire trucks. In his written testimony, the Chief did not disclose the preliminary injunction. Bill 295 was signed by the Governor and became Public Law 27-99; however, the Governor raised concern on Public Law 27-99 that GFD and GSA lacked guidance to make the necessary procurement because it waived all methods of procurement.

In September 2004, GSA issued requests for quotation for the purchase of fire trucks to three local vendors: Mid-Pacific Far East, International Equipment of Guam, and Morrico. GSA allowed only four days for the three vendors to respond to over 100 pages of specifications. Mid-Pacific Far East was the only vendor to submit a price proposal in the four-day time period allotted.

In October 2004, GSA awarded Mid-Pacific Far East a purchase order for \$551,944 for the purchase of two fire trucks.

From our observations, we determined the following:

- The Chief's testimony to the Legislature on Bill 295 should have disclosed the Court's preliminary injunction prohibiting the first attempt of an emergency purchase of fire trucks.
- Four days for vendors to respond to over 100 pages of specifications was unreasonably short.
- GSA should have taken a more active role in ensuring that an independent procurement process and review was conducted.
- Price comparisons from other sources, such as the Federal GSA should have been obtained.

GFD has not been provided a consistent source of funding to replace fire trucks and ambulances. Because of this lack of consistent funding, GFD has had to resort to emergency requests whenever the number of fire trucks and ambulances are precariously low. The passage of P.L. 27-99 permitted GFD to purchase two fire trucks without conforming to standard procurement practices, thus, setting a precedent allowing emergency purchases to be obtained without following emergency procurement regulations.

It is unknown whether the Legislature would have passed Bill 295, had the Chief disclosed the relevant information surrounding the court injunction. By failing to disclose this information the Chief was less than forthright. P.L. 27-99 may have immediately addressed GFD's need for fire trucks; however, the waiver of procurement regulations is not good procurement policy and should be discouraged. Further, P.L. 27-99 may be viewed as an intrusion upon judicial decision-making and judicial independence since it voided the court's preliminary injunction, possibly undermining the separation of powers among the three branches of government.

We recognize the Government of Guam's current financial difficulty, unless a consistent funding source is provided to GFD for the purchase of necessary emergency vehicles and equipment, GFD will continue to resort to emergency requests for these purchases.

We urge the Legislature to discontinue passing legislation that waives procurement regulations of any purchase. Even the Governor raised concern over the lack of procurement procedures in P.L. 27-99. We recommend that GFD develop a 5-year and 10-year capital replacement plan and submit the plans to the Legislature to ensure that GFD receives the needed funding for the purchase, maintenance and upkeep of its emergency vehicles and equipment.

The Chief and the CPO disagreed with our reference to brand name specifications, which we have modified in our report. The CPO disagreed with five other areas of our report; however, we did not change our statements. See Attachment 4 for our response to those areas of disagreements.



Doris Flores Brooks, CPA, CGFM
Public Auditor



OFFICE OF THE PUBLIC AUDITOR

MANAGEMENT LETTER

May 2, 2005

Honorable Mark Forbes
Speaker and Chairman on General and Omnibus Matters
28th Guam Legislature
155 Hesler Place
Hagåtña, Guam 96932

Subject: Observation of Emergency Procurement of Fire Trucks

Dear Mr. Speaker:

This letter represents the results of our observation of the emergency procurement of two fire trucks by the Guam Fire Department (GFD) and General Services Agency (GSA). Pursuant to Public Law (P.L.) 27-99, passed June 25, 2004, the Office of the Public Auditor (OPA) was designated as the observer for this procurement process. The law waived procurement requirements of the Guam Procurement Law (Part B, Article 3, Chapter 5, of Title 5, Guam Code Annotated) for a period of 180 days from the date of enactment or until December 21, 2004. Although the procurement process was waived, our objective, as an observer, was to determine whether GFD's procurement request and GSA's procurement process were conducted with due diligence.

Background

Historically the shortage and breakdown of emergency vehicles at GFD has plagued the department for years. Since 1998 GFD has presented in-service fire apparatus and assessment reports to the Legislature for firefighting equipment and vehicles needing upgrade and replacement. The Legislature passed four public laws related to the procurement of rescue and fire fighting vehicles and equipment, which collectively appropriated \$3.3 million¹ to GFD. See Attachment 1 for details.

As of March 2005 GFD was also allocated approximately \$1.3 million² in federal funds from the Compact Impact grants for the purchase of fire trucks, ambulances and equipment.

In order to determine how many fire trucks, ambulances, and emergency vehicles GFD has on

¹ Of the \$3.3 million, only \$1.2 million was released to GFD. According to the Bureau of Budget Management and Research (BBMR), the balance has not been released because they are waiting funding from the proposed bond issue that is currently under litigation.

² Of the \$1.3 million, \$527,301 was allocated for fire trucks and \$745,521 was allocated for ambulances and equipment.

hand and are operational, OPA requested a copy of GFD's vehicle inventory. GFD has yet to provide an inventory list as of the date of this report.

An Attempt at Emergency Procurement

In a memorandum to the Chief Procurement Officer (CPO), dated December 11, 2003, the GFD Chief (Chief) reported that of 12 fire stations, only 4 stations had the required fire trucks. Because of this shortage of fire trucks, GFD operations were severely hampered. The Chief requested GFD "be allowed to use the Emergency Procurement clause . . . to assist with the expedient procurement of fire trucks." GFD proposed to "utilize U.S. Department of the Interior funding awarded to GFD to purchase three (3) structural fire pumpers."



Image 1: Sample image of fire truck.

In response to the Chief's request, the CPO issued a certification of emergency on December 12, 2003, which was subsequently approved by the Governor on December 13, 2003. On the very same day, Mid-Pacific Far East, a Division of Bisnes Mami Inc., a local distributor for Emergency One (E-One) Inc., submitted a cost proposal of \$244,971, including freight, for a fire truck.

On December 15, 2003, GFD notified GSA that it had selected Mid-Pacific Far East and submitted two requisitions, totaling \$734,913, for the purchase of three fire trucks.

On December 20, 2003, Morrico Equipment Corporation (Morrico), another local fire truck distributor, protested the procurement and subsequently filed a lawsuit³ in the Superior Court of Guam against GSA and Mid-Pacific Far East on February 4, 2004.

On December 31, 2003, the CPO transmitted the emergency certification for GFD's emergency procurement of fire trucks to the Legislature.

On March 11, 2004, the Superior Court of Guam found that GFD and GSA "did not comply with 5 G.C.A. §5215."⁴ The court further found that "the written determination of emergency by the Guam General Services Agency and the Guam Fire Department dated December 31, 2003,⁵ failed to comply with requirements of 5 G.C.A. §5425⁶ for the procurement of Fire Trucks in this case and any actions taken in furtherance of the procurement is void pursuant to §5425(g)." The preliminary injunction issued by the Court stated that GFD and GSA "shall not proceed with further solicitation or with the award... prior to the final resolution of such protest..." To date, there have been no further proceedings on this case. A detailed sequence of events of this emergency procurement is provided in Attachment 2.

³ Superior Court of Guam Civil Case No. CV0152-04. See Attachment 3 for the Court decision and order.

⁴ Reference to GSA's Emergency Procurement Regulations.

⁵ Date was incorrectly transcribed as December 31, 2003 instead of December 13, 2003.

⁶ Reference to GSA's Authority to Resolve Protested Solicitations and Awards.

Waiver of Procurement Regulations

Instead of re-soliciting the procurement of the fire trucks under the normal procurement process, GFD received an appropriation and an exemption from all procurement regulations. A timeline of these events follows:

On June 4, 2004, the Chief testified for the passage of Bill 295, which granted an exemption from the procurement regulations, and re-appropriation of the \$600,000 from the GFD Lease-to-Purchase Program for the emergency purchase of two fire trucks. Our review of the Chief's testimony found that the Chief did not disclose that GFD and GSA had been enjoined from taking further action on the previous emergency procurement of three fire trucks.

On June 25, 2004, the Governor signed Bill 295 into law. On July 7, 2004, the Governor transmitted a letter that raised concern on Public Law 27-99 that GFD and GSA lacked guidance to make the necessary procurement because it waived all methods of procurement. The Governor requested the Legislature to amend the law to provide procedures for the purchase or repair of emergency equipment or permit GSA to develop rules for the procurement.

On August 31, 2004, nearly two months later, GFD submitted a requisition, totaling \$495,896, which was prepared by GFD Fire Captain Federal Programs Coordinator (Captain), for the emergency procurement of two fire trucks. Each truck was estimated to cost \$247,948 including freight.

On September 13, 2004, GSA issued a request for quotations (RFQ) to three local vendors: Mid-Pacific Far East, International Equipment of Guam (International Equipment) and Morrico. The RFQ stated that vendors must respond "no later than September 17, 2004." The three vendors were required to pick up the detailed requirements and technical specifications, which were more than 100 pages, and were given only four days to respond. According to the Captain, for all intents and purposes the specifications used in this procurement were similar to the specifications issued in December 2003. However, there was no notation in these specifications to indicate that the December 2003 and September 2004 specifications were similar, therefore a vendor would have to review both sets of specifications in order to ascertain the similarities.

On September 16, 2004, pursuant to P.L. 27-99, the CPO notified OPA of its involvement as an observer for the procurement of two fire trucks.

On September 17, 2004, GSA received two responses to the RFQ from Mid-Pacific Far East and International Equipment. Mid-Pacific Far East submitted a proposal for three options as illustrated in Table 1. International Equipment responded with a "no quote... time given to quote is too short." Morrico did not provide a response to the RFQ.

Table 1: Mid-Pacific Far East Quotations

Options	No. of Trucks	Unit Price	Total Price	Maintenance Cost	Total Cost
1	2	\$ 276,444	\$ 552,888	\$ 37,500	\$ 590,388
2	3	273,564	820,692	56,250	876,942
3	5	270,744	1,353,720	93,750	\$ 1,447,470

On September 21, 2004, the GSA Buyer II orally requested a cost breakdown from Mid-Pacific

Far East.

On September 24, 2004, GSA followed up with Morrico as to why they had not responded to the RFQ. The follow-up was initiated by GSA after OPA raised the issue that adequate documentation of the procurement process was needed and suggested GSA obtain or document attempts made to contact vendors. Morrico did not provide a response to GSA.

On September 30, 2004, GSA received a revised quotation of \$551,944 for two fire trucks from Mid-Pacific Far East. The revision was \$38,444 lower than the initial \$590,388 previously quoted.

On October 4, 2004, GSA provided GFD the lower quotation from Mid-Pacific Far East and requested GFD to review and evaluate the specifications and submit a response no later than October 11, 2004.

On October 5, 2004, the Chief and the Captain reviewed and responded that Mid-Pacific Far East's proposal met the requirements and specifications. The Captain also noted his non-acceptance of the estimated cost of \$590,388. In a discussion with the Captain, he indicated that the reason for his non-acceptance of the original quotation was because of a price miscalculation by the vendor.

On October 6, 2004, OPA staff met with GFD and GSA officials to discuss how Mid-Pacific Far East was selected. The GSA Buyer II and the Captain stated that Mid-Pacific Far East was the only vendor who responded to the RFQ and that, in actuality, GSA did not have to do anything further since the procurement regulations were waived.

On October 8, 2004, GSA issued a notice of award to Mid-Pacific Far East, in the amount of \$551,944, for the purchase of two fire trucks including maintenance, and requested Mid-Pacific Far East submit a performance bond no later than October 22, 2004. GSA subsequently accepted a letter of credit from Mid-Pacific Far East in lieu of the performance bond.

On October 28, 2004, GSA issued a purchase order (PO), totaling \$551,944, to Mid-Pacific Far East. We noted that although the PO was dated October 28, 2004, the PO was signed by the CPO on October 26, 2004, and picked up by Mid-Pacific Far East on October 27, 2004.

Mid-Pacific Far East was given 220 days to deliver the two fire trucks, or no later than June 4, 2005.

OPA Observations

From our observations, we determined that:

1. The GFD Chief, in his testimony to the Legislature, should have disclosed the Court's preliminary injunction that prohibited the first attempt of an emergency procurement for the fire trucks.
2. The four days that GSA allowed prospective bidders to respond to the RFQ was unreasonably short. As part of our observation, we contacted the representatives of International Equipment and Morrico, each of which confirmed that the four-day period for submitting a price quotation for the fire trucks was too short. The representatives

informed us that their efforts to respond to more than 100 pages of specifications would have been a futile exercise since the specifications were namely for fire trucks manufactured by E-One Inc. The Morrico representative stated that the company (Morrico) would not have been given “a fair chance” because they had a previous litigation with GFD. See Attachment 3 for details.

3. Although brand names were utilized throughout the specifications, the Captain informed us that the references to “brand” names as part of the specifications were used for descriptive purposes to guide contractors in interpreting GFD requirements. Specifically, the RFQ stated that:

“References to a particular trade name, manufacturer’s catalog or model number are made for descriptive purposes to guide contractors in interpreting the requirements of the Guam Fire Department. These references should not be construed as excluding proposals of other types of materials, equipment and supplies, unless otherwise stated.... Contractors submitting specifications that are equal to or greater than these specifications, hereinafter referred to as “Equivalent(s)”, could be allowed after review for said quality and compliance.

Therefore, vendors were not excluded from submitting other specifications that were either equal to or greater than those specified.

4. GSA should have taken a more active role in ensuring that an independent procurement process and review was conducted. GSA’s role in this emergency procurement was merely to process GFD’s request.
5. GSA should have obtained price comparisons from other sources such as the Federal GSA. By obtaining more proposals, the lower the price of the purchase is likely to be.⁷ OPA accessed the Federal GSA website and found quotations of fire trucks ranging from \$196,888 to \$241,780. Although these quotations did not include detailed specifications, our efforts suggest that lower prices could have been obtained. There was no documentation in the procurement file at the time to show that either GFD or GSA made any price comparison to Federal GSA.

GFD Submits Another Invitation for Bid

On February 16, 2005, almost 11 months after the preliminary injunction was issued in March 2004, GFD and GSA issued a new invitation for bid (IFB) under standard procurement procedures for the purchase of the three fire trucks. One has to wonder why it took GFD and GSA nearly a year to solicit for the purchase for another three fire trucks. However, we did not review this bid.

Conclusion

GFD has not been provided a consistent source of funding to replace fire trucks and ambulances. Because of this lack of consistent funding, GFD has had to resort to emergency requests whenever the number of fire trucks and ambulances are precariously low. The passage of P.L

⁷ An Elected Official’s Guide to Procurement by Patricia C. Watt.

27-99 permitted GFD to purchase two fire trucks without conforming to standard procurement practices, thus, setting a precedent allowing emergency purchases to be obtained without following emergency procurement regulations.

Although P.L. 27-99 may have immediately addressed GFD's need for fire trucks, the waiver of procurement regulations is not good procurement policy and should be discouraged. It is unknown whether the Legislature would have passed Bill 295, had the Chief disclosed the relevant information surrounding the court injunction. By failing to disclose this information, the Chief was less than forthright. Further, P.L. 27-99 may be viewed as an intrusion upon judicial decision-making and judicial independence since it voided the court's preliminary injunction, possibly undermining the separation of powers among the three branches of government.

GFD should develop long-range capital plans for emergency vehicles and equipment. The capital plan should be updated and submitted with GFD's annual budget in order to provide the basis for funding the necessary vehicles and equipment. If funding is not consistently provided, GFD will continue to resort to emergency requests for fire trucks and ambulances.

Recommendations

We urge the Legislature to discontinue passing legislation that waives procurement regulations of any purchase. Even the Governor raised concern over the lack of procurement procedures in P.L. 27-99.

We recognize the Government of Guam's current financial difficulty, however, unless a consistent funding source is provided to GFD for the purchase of emergency vehicles and equipment, GFD will continue to resort to emergency requests for these purchases.

We recommend that GFD develop and submit a 5-year and 10-year capital replacement plan to the Legislature to ensure that GFD receives the needed funding for the purchase, maintenance and upkeep of its emergency vehicles and equipment.

Management Responses and OPA Reply

On March 21, 2005 we met with GFD and GSA officials to discuss the preliminary draft report. As a result, certain changes were made to the report, more specifically our comments on "brand" specifications. Based on the response provided by the Chief and the CPO, we modified the report as appropriate and clarified the reference to "brand" name specifications, to state that references to "brand" names were used for descriptive purposes to guide contractors in interpreting GFD requirements

The Chief disagreed with our statement that he was not forthright by failing to disclose the Court injunction during the public hearing. The Chief stated, "It is true that in my written testimony, I did not disclose in the public hearing of the Court injunction that prohibited the procurement of fire trucks. This information was omitted with the knowledge that the Chairman, Committee on Public Safety & Tourism, 27th Guam Legislature and members of the committee were aware of the court injunction." In our review of the Committee Report there was no written comment about the Court injunction. See Attachment 5 for the Chief's complete response.

The CPO disagreed with six areas of our report. As stated earlier, we modified our report's reference to brand name specifications. The CPO disagreed with our statement that the four days allowed for vendors to respond to the RFQ was unreasonably short. Yet in the attempted emergency procurement of December 2003 the CPO allotted nine days. The CPO also disagreed with our statement that GSA should have taken a more active role in the procurement process. However, there was nothing in the procurement file to document that GSA did any additional review. A GSA Buyer II also stated that GSA did not have to do anything further since procurement regulations were waived. See Attachment 4 for more detailed discussion.

We appreciate the cooperation shown by the Guam Fire Department and the General Services Agency.

The legislation, creating the Office of the Public Auditor, requires agencies to submit an action plan to implement audit recommendations within six months or by October 28, 2005 after report issuance. Accordingly, our office will be contacting the Chief to provide the target date and title of the official(s) responsible for implementing the recommendation.

Limitations of Report

This report does not provide conclusions involving legal determination and contains only evidentiary conclusions based on documentation available during our review. Our review was conducted in accordance with the *Generally Accepted Government Auditing Standards*. This report has been released to the Governor of Guam, the Speaker and the members of the 28th Guam Legislature, the Director of Department of Administration, the Chief of Guam Fire Department, the Chief Procurement Officer of General Services Agency, the Director of Bureau of Budget and Management Research, the Chief Justice of Supreme Court, the Presiding Judge of Superior Court, and the Attorney General of Guam. This report is a matter of public record and its distribution is not limited.

Senseramente,



Doris Flores Brooks, CPA, CGFM
Public Auditor

Attachments

Summary of GFD Legislations

Effective Date	Public Law	Amount Appropriated	Description
25-Jun-04	27-99	\$ 600,000	Emergency procurement of fire trucks, emergency lifesaving equipment or supplies, and fire fighting apparatus for the Guam Fire Department, which waived procurement requirements.
31-Oct-03	27-35	2,075,000	Creation of "Community Advancement Fund" which shall be maintained for the purchase of no less than five ambulances and not less than four structural pumper fire trucks in the amount of \$875,000 and \$1,200,000, respectively.
1-Oct-01	26-35	600,000	Creation of the GFD Lease-to-Purchase Program Fund to implement a lease purchase and/or loan program not to exceed 10 years with the United States Department of Agriculture (USDA), which shall be expended exclusively for the financing of fire apparatus, protective personnel equipment and emergency response vehicles.
25-Mar-99	25-03	600,000	Creation of Firefighters Equipment Replacement Fund for the replacement of essential fire fighting equipment.
		\$ 3,875,000	
Less		-600,000	Amount was re-appropriated from P.L. 26-35 to P.L. 27-99.
Total Appropriations:		3,275,000	
Less		2,075,000	These funds have yet to be released to GFD pending the bond issuance currently in litigation.
Actual Allocations:		\$1,200,000	

Sequence of Events

- November 2003: GFD solicited quotations for three fire trucks.
- December 11, 2003: The Chief sent a letter to the CPO of GSA requesting for a “declaration of emergency.”
- December 12, 2003: The CPO executed an emergency certification.
- December 13, 2003: The Governor approved the emergency certification. Mid-Pacific Far East submitted a proposal to the Chief, as the local distributor of an off-island vendor.
- December 15, 2003: The Chief notified GSA that he had selected Mid-Pacific Far East. GFD executed two requisitions for three fire trucks for the sum of \$489,942 and \$244,971, including freight, listing Mid-Pacific Far East as the suggested source.
- December 17, 2003: Four days after Mid-Pacific Far East had submitted its proposal, GSA faxed a request for quotation (RFQ) to Morrico that stated a response was due no later than December 19, 2003. This allowed Morrico only two days to secure a price quotation for the fire trucks.
- February 4, 2004: Morrico filed a lawsuit in the Superior Court of Guam against GSA because of the manner in which GSA had utilized the emergency procurement of three fire trucks awarded to Mid-Pacific Far East.
- March 11, 2004: The court issued a preliminary injunction in favor of Morrico and GSA was enjoined from taking any actions to procure the fire trucks.
- March 2004 to June 2004: GFD and GSA did not issue new solicitations or bid to procure the fire trucks.
- June 4, 2004: The Chief provided written and oral testimony to Bill 295, which would re-appropriate \$600,000 from the GFD Lease-to-Purchase Program and waive procurement requirements.

- June 25, 2004: Almost three months after the court ruling, the 27th Guam Legislature passed P.L. 27-99, which appropriated \$600,000 to GFD for the emergency procurement of fire trucks and related equipment and waived procurement regulations. The law also mandated the Public Auditor be an observer throughout the procurement process and that any remaining funds will revert back to the General Fund if not used within 180 days or until December 21, 2004.
- July 7, 2004: The Governor sent a letter to former Speaker Pangelinan requesting for an amendment to P.L. 27-99 to provide procedures or permit GSA to develop rules for the procurement of fire trucks since GSA is left without guidance because it waived procurement regulations.
- August 31, 2004: Nearly two months later, GFD submitted a requisition for two fire trucks, estimated to cost \$247,948 each, including freight for this “emergency procurement.”
- September 13, 2004: GSA issued requests for quotation (RFQ) to three different vendors, specifically, Mid-Pacific Far East, International Equipment of Guam, and Morrico. The RFQ stated that vendors must respond “no later than September 17, 2004.” The three vendors were required to pick up the detailed requirements and technical specifications, which were more than 100 pages, at GSA and were given only four days to respond.
- September 16, 2004: CPO notified OPA of its involvement as an observer for the procurement of fire trucks, pursuant to P.L. 27-99.
- September 17, 2004: GSA received two responses, from Mid-Pacific Far East and International Equipment of Guam, for the RFQ. International Equipment of Guam responded with a “no quote... time given to quote is too short,” and Morrico did not provide a response. Mid-Pacific Far East submitted three options.
- September 21, 2004: GSA Buyer II orally requested a cost breakdown from Mid-Pacific Far East.

- September 24, 2004: GSA followed up with Morrico as to why they did not respond after OPA raised the issue.
- September 30, 2004: Mid-Pacific Far East submitted the revised lower cost breakdown.
- October 4, 2004: GSA provided GFD with Mid-Pacific Far East's revised quotation and requested GFD review and evaluate the specifications and respond no later than October 11, 2004.
- October 5, 2004: The Chief and the Captain reviewed and indicated that Mid-Pacific Far East's proposal met the requirements and specifications. The Captain also notated his non-acceptance of the estimated cost of \$590,388.
- October 6, 2004: OPA staff met GFD and GSA officials to discuss how the selection was made to Mid-Pacific Far East. The GSA Buyer II and the GFD Fire Captain Federal Programs Coordinator stated that Mid-Pacific Far East was the only vendor who responded to the RFQ and that in actuality GSA did not have to do anything further since the procurement regulations were waived.
- October 8, 2004: GSA issued a notice of award to Mid-Pacific Far East for \$551,944 and requested Mid-Pacific Far East to submit a performance bond no later than October 22, 2004. In a subsequent discussion with the CPO, GSA accepted a letter of credit in lieu of the performance bond.
- October 11, 2004: Mid-Pacific Far East acknowledged GSA's notice of award.
- October 28, 2004: GSA issued a purchase order to Mid-Pacific Far East in the amount of \$551,944 for two fire trucks, including freight with a time for delivery of 220 days, or no later than June 4, 2005.

Civil Case No. CV0152-04

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**IN THE SUPERIOR COURT
OF GUAM**

MORRICO EQUIPMENT CORPORATION,
Plaintiff.

vs.

GENERAL SERVICES AGENCY,
DEPARTMENT OF ADMINISTRATION,
GOVERNMENT OF GUAM, and
CLAUDIA ACFALLE, PERSONALLY AND
IN HER OFFICIAL CAPACITY AS THE CHIEF
PROCUREMENT OFFICER OF THE GENERAL
SERVICES AGENCY, and MID-PAC FAR EAST,
A DIVISION OF BISNES MAMI, INC.,
Defendants.

CIVIL CASE NO. CV0152-04

DECISION AND ORDER

INTRODUCTION

This matter came before the Honorable Michael J. Bordallo on the 18th day of February, 2004 on Plaintiff's Motion for a Preliminary Injunction. Kevin Fowler represented the Plaintiff, Morrico Equipment Corporation. Joseph A. Guthrie represented the Defendants, General Services Agency, Department of Administration, Government of Guam and Claudia Acfalle and Richard Johnson represented Mid-Pac Far East, a Division of Bisnes Mami, Inc. The Court took the matter under advisement and now issues the following Decision and Order.

BACKGROUND

Morrigo Equipment Corporation ("Morrigo") moves this Court for a preliminary injunction, to enjoin the Guam General Services Agency ("GSA") from proceeding under Purchase Order No. P046A01508 and P046A01509 ("Purchase Orders") issued to Mid-Pac Far East, a Division of Bisnes Mami, Inc. ("Mid-Pac") for the purchase of three structural pumper fire trucks pending resolution of this case.

In November, 2003, the Guam Fire Department ("GFD"), requested quotations from four off-island fire truck manufacturers, E-One, W.S. Darley & Co., HME, Inc., and Pierce Manufacturing, Inc., for three (3) structural pumper fire trucks ("Fire Trucks").

On December 12, 2003, Claudia Acfalle, as Chief Procurement Officer of GSA executed a Certification of Emergency purporting to authorize the procurement of the Fire Trucks. As the local

1 *Morrigo v. Guam General Services Agency, et al CV0152-04*
2 *Decision and Order*

3 distributor of E-One, Mid-Pac submitted its proposal for the Fire Trucks on December 13, 2003.

4 Chief Mike Uncangco, Guam Fire Department, wrote a letter to GSA stating his preference
5 to purchase the Fire Trucks from Mid-Pac on December 15, 2003. That same day, GFD issued a
6 requisition to GSA for the purchase of the Fire Trucks.

7 On December 17, 2003, Morrigo received a price request from GSA for the Fire Trucks
8 which required a response no later than December 19, 2003. On December 20, 2003, Morrigo
9 requested additional time to respond to the price request and allegedly protested the manner of and
10 basis for the alleged emergency. GSA extended the response date to December 26, 2003.

11 Morrigo provided a price quote on December 26, 2003, of \$195,000 per Fire Truck (FOB
12 West Coast) and based on its allegations formally protested the manner of the procurement.

13 On January 8, 2004, through a Sunshine Act request by Morrigo it was revealed that the
14 Guam GSA issued two Purchase Orders to Mid-Pac for the Fire Trucks at a cost of \$244,971 per Fire
15 Truck. On January 14, 2004, Morrigo filed another protest with GSA regarding the issuance of the
16 Purchase Orders.

17 Morrigo filed a complaint in the Superior Court of Guam on February 4, 2004 seeking a
18 temporary restraining order and injunctive relief.

19 **DISCUSSION**

20 Morrigo Equipment Corporation ("Morrigo") moves this Court for preliminary injunction to
21 enjoin, the Defendants, General Services Agency, Department of Administration, Government of
22 Guam and Claudia Acfalle (collectively "GSA") from proceeding under Purchase Order Nos.
23 P046A01508 and P046A01509 ("Purchase Order") issued to Mid-Pac Far East, a Division of Bisnes
24 Mami, Inc. ("Mid-Pac") for the purchase of three structural pumper fire trucks pending resolution
25 of this case.

26 A plaintiff is entitled to an injunction only if the court finds that (1) the plaintiff will probably
27 prevail on the merits, (2) the plaintiff will suffer irreparable injury if injunctive relief is not granted,
28 (3) in balancing the equities, the defendant will not be harmed more than the plaintiff is helped by

1 *Morrico v. Guam General Services Agency, et al CV0152-04*
2 *Decision and Order*

3 the injunction, and (4) granting the injunction is in the public interest. William Inglis & Sons Baking
4 Co. v. ITT Continental Baking Co., Inc., 526 F.2d 86, 87 (C.A. Cal. 1975). See also, HSD Engine
5 Co. v. Guam Power Authority, CV1524-02 (Super. Ct. Guam Nov. 29, 2002).

6 Morrigo argues that it is entitled to a preliminary injunction because the Guam GSA issued
7 two (2) purchase orders to Mid-Pac for three (3) Fire Trucks prior to the resolution of Morrigo's
8 protest which was submitted on December 20 and 26, 2003, and January 14, 2004. Morrigo asserts
9 that the emergency declaration by GSA on December 12, 2003, failed to comply with 5 G.C.A.
10 §5215 which states that:

11 Notwithstanding any other provision of this Chapter, the Chief Procurement
12 Officer, that Director of Public Works, the head of a purchasing agency, or a designee
13 of wither officer may make or authorize others to make emergency procurements
14 when there exists a threat to public health, welfare, or safety under emergency
15 conditions as defined in regulations promulgated by the Policy Office; provided that
16 such emergency procurements shall be made with such competition as is practicable
17 under the circumstances, and further provided that the procurement agent must solicit
18 at least three (3) contractors from the qualified bid list who have provided the needed
19 supplies and services to the government within the preceding twelve (12) months,
20 and must award the procurement to the firm with the best offer, as determined by
21 evaluating cost and delivery time. No emergency procurement or combination of
22 emergency procurements may be made for an amount of goods or supplies greater
23 than the amount of such goods and supplies which is necessary to meet an emergency
24 for the thirty (30) day period immediately following the procurement. A written
25 determination of the basis for the emergency and for the selection of the particular
26 contractor shall be included in the contract file. The requirements for a written
27 determination for the emergency shall be met if the procurements are being made on
28 the basis of the Governor's declaration of an emergency situation by Executive Order
if such Order states that emergency procurement may be resorted to for the purposes
of the Order. Unless authorized by an Executive Order declaring an emergency, no
emergency procurement may be made except on a certificate made under penalty of
perjury by the Chief Procurement Officer, Director of Public Works or the head of
a purchasing agency, as the case may be. Certified copies of the certificate shall be
sent, prior to award and as a condition thereof, to the Governor and Speaker of the
Legislature. The certificate shall contain the following:

- (1) a statement of the facts giving rise to the emergency;
- (2) the factual basis of the determination that an emergency procurement is necessary; and
- (3) a statement that emergency procurement is not being used solely for the purpose of avoidance of the provisions of this Chapter.

1 *Morrico v. Guam General Services Agency, et al CV0152-04*
2 *Decision and Order*

3 In addition to any other requirement, the Governor must approve in writing
4 all authorizations for emergency procurement.

5 5 G.C.A. §5215. Although Guam law does not provide any guidance as to how an Executive Order
6 is issued, the Court is not persuaded by the argument that the certification of emergency made on
7 December 12, 2003 and signed by Chief Procurement Officer and the Governor was an Executive
8 Order simply by virtue of the Governor's signature. An Executive Order is defined as "an order
9 issued by or on behalf of the President, usually intended to direct or instruct the actions of executive
10 agencies or government officials, or to set policies for the executive branch to follow." Black's Law
11 Dictionary, 7th Edition p. 591. Executive Orders on Guam are collected, numbered and reported by
12 the Compiler of Laws. 1 G.C.A. §1612. In an attempt to comply with 5 G.C.A. §5215, GSA sought
13 the approval of the Governor to proceed with the procurement of the Fire Trucks on the basis of
14 GSA's certification that an emergency situation existed. However, the Governor does not instruct
15 or direct GSA to do anything pursuant to his alleged Order declaring an emergency. The document
16 has none of the ordinary language contained in Executive Orders and was not compiled or numbered
17 as other Executive Orders. Therefore, the Court finds that the Governor did not issue an Executive
18 Order for the purpose of procuring the Fire Trucks in this case. Thus, the Court must now determine
19 whether the pre-protest certification of emergency dated December 12, 2003, complied with 5
20 G.C.A. §5215.

21 While the certification of emergency does not contain any formal language that it was made
22 under penalty of perjury, the parties do not dispute that a certified copy was not forwarded to the
23 Speaker of the Legislature. Even if the Court were to conclude that the phrase "made under penalty
24 of perjury" is not necessarily required, the statute requires as a condition prior to award, that a
25 certified copy be forwarded to the Speaker of the Legislature. Based on the specific requirements
26 of §5215, the Court finds the December 12, 2003, certification of emergency invalid. §5215
27 specifically states that no emergency procurement may be made except on a certificate made under
28 penalty of perjury and requires that prior to award and as a condition thereof, a certified copy is sent

1 *Morrigo v. Guam General Services Agency, et al CV0152-04*
2 *Decision and Order*

3 to the Speaker of the Legislature. Therefore, the pre-protest certification of emergency dated
4 December 12, 2003, is invalid.

5 The Court must now determine whether GSA may proceed with the emergency procurement
6 of the Fire Trucks prior to the resolution of Morrigo's protest based on GSA's written determination
7 of emergency dated December 31, 2003.

8 This Court in Morrigo v. GSA, et. al., CV0140-04 (Super. Ct. Guam February 18, 2004) held
9 that GSA's post protest written determination of emergency dated December 31, 2003, was invalid
10 for failure to comply with the requirements of 5 G.C.A. §5425(g) which requires that:

11 (g) In the event of a timely protest under Subsection (a) of this Section or under
12 Subsection (a) of §5480 of this Chapter, the Territory shall not proceed further with
13 the solicitation or with the award of the contract prior to final resolution of such
14 protest, and any such further action is void, unless:

15 (1) The Chief Procurement Officer or the Director of Public Works after consultation
16 with and written concurrence of the head of the using or purchasing agency and the
17 Attorney General or designated Deputy Attorney General, makes a written
18 determination that the award of the contract without delay is necessary to protect
19 substantial interests of the Territory; and

20 (2) Absent a declaration of emergency by the Governor, the protestant has been given
21 at least two (2) days notice ...; and

22 (3) If the protest is pending before the Board or the Court, the Board or Court has
23 confirmed such determination, or if no such protest is pending, no protest to the
24 Board of such determination is filed prior to expiration of the two (2) day period
25 specified in Item (2) of Subsection (g) of this Section.

26 5. G.C.A. §5425(g). The facts in Morrigo v. GSA, et. al., CV140-04 are substantially identical the
27 facts in this case. Therefore, any attempt to proceed with the award of the contract in violation of
28 5. G.C.A. §5425(g) is void. Thus, the Court finds that Morrigo has met its burden of proving the
likelihood of success on the merits as required for the issuance of a preliminary injunction.

At the hearing, attorney Richard L. Johnson on behalf of Mid-Pac argued for the first time
that Morrigo's protest although timely filed did not comply with Guam's procurement laws and are
therefore invalid and ineffective. At this time, the Court declines to decide the merits of Morrigo's
protest as it is not properly before the Court and each party has not been given a chance to fully brief

1 *Morrico v. Guam General Services Agency, et al CV0152-04*
2 *Decision and Order*

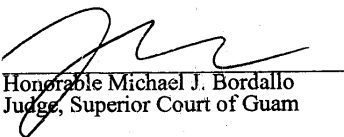
3 the issue. Although the Court is aware that GSA has filed a motion for summary judgment alleging
4 that Morrigo lacks standing to file suit in Morrigo v. GSA et. al., CV140-04 several issues remain
5 regarding the form and manner of Morrigo's protest. Among the issues are whether such an
6 argument must be plead as an affirmative defense, which party bears the burden of proving
7 compliance, and whether the statute governing the filing of a protest requires strict or substantial
8 compliance as a prerequisite to the Court obtaining jurisdiction. Therefore, the Court will give the
9 parties a chance to file their motion and to fully brief the issues.

10 **CONCLUSION**

11 FOR THE FOREGOING REASONS, the Court GRANTS Plaintiff's Motion for a
12 Preliminary Injunction. The Court finds that Defendants did not comply with 5 G.C.A. §5215. The
13 Court further finds that the written determination of emergency by the Guam General Services
14 Agency and the Guam Fire Department dated December 31, 2003, failed to comply with
15 requirements of 5 G.C.A. §5425 for the procurement of Fire Trucks in this case and any actions
16 taken in furtherance of the procurement is void pursuant to §5425(g).

17 THE DEFENDANTS ARE HEREBY ENJOINED from taking any further action to procure
18 the Fire Trucks at issue until Defendants comply with the requirements of 5 G.C.A. §5425.

19 SO ORDERED this 11 day of March, 2004.

20
21
22 
23 Honorable Michael J. Bordallo
24 Judge, Superior Court of Guam

25
26
27
28

ENTERED INTO	DOCKET
DOCUMENT NO. <u>CV0152-04</u>	
on <u>3/11/04</u> date	
By: <u>[Signature]</u>	

Received for Service

3/11/04 M
19 1000
Marshal, Superior Court
Guam

OPA Reply to GSA Management Response

The CPO disagreed with six areas in our report.

1. The CPO disagreed with our statement that “GSA did not comply with 5 G.C.A. §5215.” The CPO’s response was, “Although the Superior Court of Guam found that GFD and GSA did not comply with 5 G.C.A. §5215, GSA did provide your office with substantial evidence showing that GSA did comply with 5 G.C.A. §5215. (Refer to Exhibit 1).” Since March 2004, there has been no evidence submitted to the Court to overturn the Court’s ruling of non-compliance, therefore this statement remains.
2. The CPO disagreed with our statement that it has taken GFD and GSA almost 11 months to re-solicit for the purchase of the three fire trucks. The CPO responded that GSA begins solicitation once a request is received from the agency and that sequence of events took place, which caused GFD’s delays. Although, we did not review this particular IFB, the 11-month time frame was derived from March 11, 2004, when the court issued its injunction to February 11, 2005, when GFD and GSA began the new solicitation. Therefore, this statement remains.
3. The CPO disagreed with our statement that the four days allowed for vendors to respond to the RFQ was unreasonably short. In her statement in Exhibit 1, dated December 19, 2003, the CPO acknowledged, “that (2) days was not adequate to submit a response. The CPO instructed the buyer to immediately issue a revised request for quotation... and to extend the due date for submission of quotations to December 26 that will allow the vendors adequate time to put together a quotation.” The time allowed by the CPO totaled nine days. By not applying the same extension to the September 2004 procurement, where only four days was given, the CPO was inconsistent in her practices. Therefore, this statement remains.
4. The CPO disagreed with our reference to brand name specifications, which we have modified in our report.
5. The CPO disagreed with our observation that GSA should have taken a more active role in the procurement process. There was nothing in the procurement file to document that GSA did any additional review. A GSA Buyer II stated that GSA did not have to do anything further since procurement regulations were waived, thus this statement remains.
6. The CPO disagreed with our observation that GSA should have obtained price comparisons from other sources, such as the Federal GSA because GSA requested for a revised quotation from Mid-Pacific Far East and that “on 21 March 2005, GFD representative did inform OPA... that he did compare prices with the Federal GSA...” However, there was no documentation in the procurement file at the time to show that either GFD or GSA made any price comparison to Federal GSA, thus this statement remains.

GFD Management Response



Felix P. Camacho
Governor

Kaleo S. Moylan
Lt. Governor

GOVERNMENT OF GUAM GUAM FIRE DEPARTMENT



Michael F. Uncangco
Fire Chief

April 25, 2005

Received by Office of the
Public Auditor
Pag 5:30PM
4/25/05

Mrs. Doris Flores Brooks, CPA, CGFM
Public Auditor
Office of the Public Auditor
Suite 401, Pacific Daily New Building
238 Archbishop Flores St.
Hagatna, Guam 96910

Buenas Mrs. Brooks,

I would like to offer my apologies for the delay in submitting our response relative to your office's Draft Report titled **Guam Fire Department Emergency Procurement of Fire Trucks**. Additional time was needed for briefing from the Acting Fire Chief and Fire Captain Rueben Olivas who both attended meetings with you and your staff and to gather information to ensure an accurate response.

Relative to GFD's response to the draft report, I offer the following:

OPA Observations

1. GFD Fire Chief in his testimony to the Legislature should have disclosed the Court Injunction that prohibited the first attempt of an emergency procurement for the fire trucks.

GFD Response

This particular observation and statement is somewhat inaccurate. It is true that in my **written** testimony, I did not disclose in the public hearing of the Court injunction that prohibited the procurement of fire trucks. This information was omitted with the knowledge that the Chairman, Committee on Public Safety & Tourism, 27th Guam Legislature and members of the committee were aware of the court injunction. However, verbally, the Chairman and members of the committee were informed of the lawsuit filed by Morrico Equipment Corporation and the decision of the court. In several occasions prior to and up to the date of the public hearing on Bill 295 which subsequently became Public Law 27-99, the Chairman was apprised of the status of the court hearings. This information was provided to him whenever updating him of the status of the procurement of fire trucks and ambulances because of his concern of GFD's extreme shortage of emergency vehicles.

P.O. Box 2950 Hagatna, Guam 96910 - Bldg. #621 East Sunset Blvd., Tiyan, Guam
Telephone No. (671) 472-3311 Fax No. (671) 472-3360

Please be advised that Guam Fire Department had no knowledge, provided information, or requested to the Chairman, Committee on Public Safety and Tourism, 27th Guam Legislature that the procurement regulations be waived through Bill 295 which subsequently became Public Law 27-99. The first time GFD was aware of this particular section was when my office was notified (a week prior to the hearing) of a scheduled public hearing on the bill at which time we were provided a copy of the bill. In conclusion, all parties involved in the passage of Bill 295 were informed of the court injunction and I was forthright and did act responsibly.

3. GSA should discourage government agencies from using "brand" names as part of the specifications.

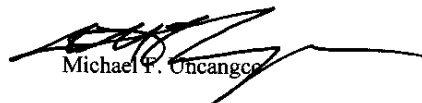
GFD Response

See attached copy of Page 7 of GFD'S Custom Fire Truck 4-Door-Rescue Style Pumper General Specification.

The Guam Fire Department is in full agreement with the OPA in GFD developing a five year and ten year capital replacement plan for all fire trucks and ambulances and other related emergency equipment. As shown on the attached, GFD presently does have a Ten Year Capital Improvement Plan. Furthermore, (also attached) GFD has presented to the Governor and members of the Guam Legislature, its Fire Equipment Replacement Cost Projections. GFD will incorporate this to its Ten Year Capital Improvement Plan.

This completes GFD's response to the OPA's Draft Report on its Observation of Emergency Procurement of Fire Trucks Pursuant to Public Law 27-99. Should you or your staff require additional information and/or clarification relative to this response or other related subject matters, please contact me at 472-3311.

Sincerely,



Michael F. Oncangco

Attachments

P.O. Box 2950 Hagatna, Guam 96910 - Bldg. #621 East Sunset Blvd., Tiyán, Guam
Telephone No. (671) 472-3311 Fax No. (671) 472-3360



GUAM FIRE DEPARTMENT CUSTOM FIRETRUCK 4-DOOR - RESCUE STYLE PUMPER

PAYMENT TERMS

The Guam Fire Department will accept no contract form that requires down payments, progressive payments during construction, or contracts with escalator clauses. Terms of payment shall be 100% payment, within forty-five (45) days, upon delivery, testing, and acceptance of the vehicle and receipt of invoice. No other terms shall be acceptable.

Does your submission comply? Yes ___ No ___ Equivalent ___

BUILT IN USA

All major components must be built and assembled in the continental United States (engine, cab, chassis, body, etc.).

Does your submission comply? Yes ___ No ___ Equivalent ___

SPECIFICATIONS

Unless otherwise stated by the contractor, the bid/quote submission will be considered in strict accordance with the specifications in this document.

References to a particular trade name, manufacturer's catalog or model number are made for descriptive purposes to guide contractors in interpreting the requirements of the Guam Fire Department.

These references should not be construed as excluding proposals of other types of materials, equipment and supplies, unless otherwise stated. The contractor awarded a contract shall furnish each item referred to in the final specifications. Contractors submitting specifications that are equal to or greater than these specifications, hereinafter referred to as "Equivalent(s)", could be allowed after review for said quality and compliance.

Does your submission comply? Yes ___ No ___ Equivalent ___

ADHERENCE TO SPECIFICATIONS

The purchaser's specifications shall, in all cases, govern the construction of the apparatus. THIS IS NOT AN RFP (Request for Proposal).

NOTICE TO CONTRACTORS: ANY SUBMISSION INDICATING THAT THE MANUFACTURER'S SPECIFICATIONS SHALL SUPERSEDE THE PURCHASER'S SPECIFICATIONS WILL IMMEDIATELY BE REJECTED.

Does your submission comply? Yes ___ No ___ Equivalent ___

SUBMISSION REVIEW AND EQUIVALENTS

To properly review all bid/quotes, the Government of Guam General Services Agency, will utilize its policies, rules and regulations as well as the provisions of the most current version of the Guam

P.O. Box 2950, Hagatna, Guam 96932

7

FIRE EQUIPMENT REPLACEMENT COST PROJECTIONS (FIRE SUPPRESSION BUREAU)

FISCAL YEAR	FIRE EQUIPMENT TO BE REPLACED	PURCHASE PRICE	ANNUAL INFLATION RATE 3.3%	ESTIMATED FIRE EQUIPMENT REPLACEMENT COST
1998	1983 GMC Pumper- Ofc#1312	\$ 85,372.00		\$ 275,000.00
	1985 International Pumper-Ofc#2521	\$ 99,813.00		\$ 275,000.00
	1986 Chevy Pumper-Ofc#2524	\$ 117,400.00		\$ 275,000.00
	1986 Chevy Pumper-Ofc#2522	\$ 117,400.00		\$ 275,000.00
	1986 Chevy Pumper-Ofc#1305	\$ 117,400.00		\$ 275,000.00
	1986 Chevy Pumper-Ofc#1528	\$ 117,400.00		\$ 275,000.00
1999	1990 Grumman Pumper-Ofc#1309	\$ 171,906.00		\$ 275,000.00
	1992 Kenworth T800 Tanker-Ofc#1307	\$ 194,964.00		\$ 240,000.68
	1991 GMC 3500 Chemical Unit-Ofc#2247	\$ 55,293.00		\$ 69,890.35
2000	1990 Grumman Pumper-Ofc#1306	\$ 171,906.00		\$ 284,075.00
	1992 GMC Utility Truck-Ofc#2157	\$ 37,000.00		\$ 46,768.00
	1992 GMC Utility Truck-Ofc#2236	\$ 37,000.00		\$ 46,768.00
2001	1990 Grumman Pumper-Ofc#1310	\$ 171,906.00		\$ 293,449.47
2002	1990 Grumman Pumper-Ofc#2523	\$ 171,906.00		\$ 303,133.30
2003	1990 Grumman Pumer-Ofc#1311	\$ 171,906.00		\$ 313,136.69
2004	1990 Grumman Pumper-Ofc#2565	\$ 171,906.00		\$ 323,470.20

2005	1990 Grumman Pumper-Ofc#1308		\$ 171,906.00		\$ 334,144.71
2006					
2007					
2008					
2009					
2010					
2011					
2012	1992 Kenworth T800 Tanker-Ofc#2520		\$ 194,964.00		\$ 366,029.89
	1992 Kenworth T800 Tanker-Ofc#1313		\$ 194,964.00		\$ 366,029.89
2014	1994 Simon-Dupl Aerial Platform High-Rise Truck-Q		\$ 1,498,500.00		\$ 2,868,553.70

****Note:** Replacement costs reflect a 3.3% per year annual inflation rate,
as calculated by the U.S. DOL inflation calculator on 3/7/03.

Researched and compiled by Fire Captain Rueben D. Olivas, Guam Fire Department.

GUAM FIRE DEPARTMENT
TEN YEAR CAPITAL IMPROVEMENT PLAN

Year	Project Name	Project Description	Project Cost	Funding Source	Justification
2004	Fire Truck Procurement	Procurement of 7 ea. Class "A" Fire Pumps	\$2,100,000.00	Compact Impact/General Fund	Replace Aging Fleet
2004	ES11 Communications Center	Renovate and construct new center	\$1,500,000.00	Federal/General Funds	Present location being reclaimed by Chamorro Land Trust for return to original land owners All Fire Department buildings lack proper security measures to mitigate vulnerability to terrorism (i.e. lighting, fencing, bay doors, etc.)
2004	Station Security	Construct security measures at all stations	\$2,000,000.00	Federal/General Funds	
2005	Barrigada Fire Station	Renovate/repair Barrigada Fire Station	\$300,000.00	General Fund	The present fire station was originally built as a dispensary and does not meet National Fire Protection Standards for station houses. The building lacks adequate space to house personnel, equipment, and emergency vehicles. The bay area (garage) is not large enough to protect structural fire pumps, ambulances, and sensitive equipment. The station and it's infrastructure is also deteriorating from age, earthquakes and previous typhoons.
2005	Fire Tanker Units	To replace fire tanker units	\$600,000.00	Compact Impact Funds	Replace Aging Fleet that has far exceeded its recommended lifespan of ten (10) years
2005	Deceddo Fire Station	Renovate/Repair	\$800,000.00	General Fund	The present fire station was originally built as a dispensary and does not meet National Fire Protection Standards for station houses. The building lacks adequate space to house personnel, equipment, and emergency vehicles. The bay area (garage) is not large enough to protect structural fire pumps, ambulances, and sensitive equipment. The station and it's infrastructure is also deteriorating from age, earthquakes and previous typhoons.
2006	Fire Truck Procurement	To procure fire structural pumps.	\$1,000,000.00	Compact Impact Funds	To replace aging fleet assigned to Yona, Umatac and Barrigada Fire Station which has far exceeded its recommended lifespan. These structural pumps were procured in 1981
2006	Sinsiana Fire Station	Relocate and construct Fire Station	\$800,000.00	General Fund	The present fire station was originally built as a dispensary and does not meet National Fire Protection Standards for station houses. The building lacks adequate space to house personnel, equipment, and emergency vehicles. The bay area (garage) is not large enough to protect structural fire pumps, ambulances, and sensitive equipment. The station and it's infrastructure is also deteriorating from age, earthquakes and previous typhoons.
2007	Agat Fire Station	Relocate and construct new Fire Station	\$800,000.00	General Fund	The fire station at present does not meet National Fire Protection Standards for station houses and lacks adequate space to house personnel, equipment, and emergency vehicles. The bay area (garage) is not large enough to protect structural fire pumps, ambulances, and sensitive equipment. The station and it's infrastructure is also deteriorating from age, earthquakes and previous typhoons. The station is also situated in an area prone to flooding.
2007	Tanuning Fire Station	Renovate	\$400,000.00	General Fund	The fire station at present does not meet National Fire Protection Standards for station houses and lacks adequate space to house personnel, equipment, and emergency vehicles. The bay area (garage) is not large enough to protect structural fire pumps, ambulances, and sensitive equipment. The station and it's infrastructure is also deteriorating from age, earthquakes and previous typhoons.
2008	Azulmo Fire Truck	To replace structural fire pumps.	\$300,000.00	Compact Impact Funds	Exceeds Recommended Safe Operational Life Expectancy

2006	Pitt Fire Station	Renovate	\$500,000.00	General Fund
2009	Umatic Fire Station	Renovate	\$500,000.00	General Fund
2009	Yona Fire Station	Renovate	\$400,000.00	General Fund
2010	Yogo Fire Station	Renovate	\$400,000.00	General Fund
2010	Talafon Fire Station	Renovate	\$400,000.00	General Fund
2011	Asumbo Fire Station	Renovate	\$500,000.00	General Fund
2011	Inarajan Fire Station	Renovate	\$400,000.00	General Fund
2012	Training Center	Construct	\$1,000,000.00	General Fund
2013	Tumon Fire Station	Construct a new fire station in Tumon	\$1,300,000.00	General Fund

The fire station at present does not meet National Fire Protection Standards for station houses and requires adequate space to house personnel, equipment, and emergency vehicles. The bay area (cascades) will be replaced with a new cascades unit. It's necessary to upgrade the cascades unit, it's infrastructure is also deteriorating from age, sandtrucks and previous typhoons.

Renovations are necessary to maintain proper level of service and be in compliance with the National Fire Protection Association(NFPA) and Americans with Disabilities Act(ADA) requirements. Station requires upgrade for connection to public sewer system.

Renovations are necessary to maintain proper level of service and be in compliance with the National Fire Protection Association(NFPA) and Americans with Disabilities Act(ADA) requirements.

Renovations are necessary to maintain proper level of service and be in compliance with the National Fire Protection Association(NFPA).

Renovations are necessary to maintain proper level of service and be in compliance with the National Fire Protection Association(NFPA).

Renovations are necessary to maintain proper level of service and be in compliance with the National Fire Protection Association(NFPA).

Renovations are necessary to maintain proper level of service and be in compliance with the National Fire Protection Association(NFPA).

To provide adequate training facility to be in compliance with National Fire Protection Association Standards and keep firefighters trained in new innovative techniques.

To meet the needs of a growing population.

GSA Management Response


Felix P. Camacho
Governor

Lourdes M. Perez
Director



GENERAL SERVICES AGENCY

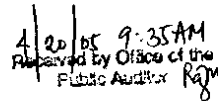
(Ahensian Setbision Hinirat)
Department of Administration
Government of Guam
148 Route 1 Marine Drive, Piti, Guam 96915
Tel: 477-8836-8 • Fax Nos.: 472-4217/4207


Kaleo S. Moylan
Lt. Governor

Joseph C. Manibusan
Deputy Director

April 15, 2005

Ms. Yuka Cabrera, CPA
Acting Public Auditor
Office of the Public Auditor
Suite 401, Pacific Daily News Building
238 Archbishop Flores Street
Hagatna, Guam 96910



Dear Ms. Cabrera:

Hafa Adai! This is in response to the draft report issued by the Office of the Public Auditor on the observation of Emergency Procurement of Fire Trucks dated April 5, 2005.

The following is the response of the General Services Agency (GSA):

1. On page 2 paragraph 6 you stated, "On March 11, 2004, the Superior Court of Guam found that GFD and GSA "did not comply with 5 G.C.A. §5215."

Response:

I disagree with this statement. For the record this was discussed with the Public Auditor, Ms. Doris Flores Brooks, on 21 March 2005. Although the Superior Court of Guam found that GFD and GSA did not comply with 5 G.C.A. §5215, GSA did provide your office with substantial evidence showing that GSA did comply with 5 G.C.A. §5215. (Refer to Exhibit 1). GSA did provide a copy of the document to Deputy Attorney General, to submit as evidence to the court. We are unaware if the Deputy Attorney General was able to submit documents provided.

2. On page 3 paragraph 3 you stated, "With the original emergency procurement of fire trucks beginning in December 2003, one can question, then, why its taken GFD and GSA almost 11 months to re-solicit for the purchase of the three fire trucks.

Page 2 of 4
OPA-Rpt. Observation P.L. 27-99
April 15, 2005

Response:

I disagree with statement. GSA begins solicitation once a request is received from the line departments/agencies for supplies/services. Series of events, took place, causing delays with the GFD. Only when the challenges were resolved did GFD resubmit the request to GSA.

3. On page 5 OPA Observations item #2 you stated, "The four days that GSA allowed prospective bidders to respond to the RFQ was unreasonably short. As part of our observation, we contacted the representatives of International Equipment and Morrico, each of which confirmed that the four-day period for submitting a price quotation for the fire trucks was too short. The representatives informed us that their efforts to respond to more than 100 pages of specifications would have been a futile exercise since the specifications were namely for fire trucks manufactured by E-One Inc. The Morrico representative stated that the company y (Morrico) would not have been given "a fair chance," because they had a previous litigation with GFD.

Response:

I disagree with this statement. As stated earlier in your report on page 3, paragraph 7, "...for all intents and purposes the specifications used in this procurement were similar to the specifications issued in December 2003. Therefore, both Morrico and International Equipment had copies of the specifications for more than a year.

4. On page 5, item #3 you stated, "GSA should discourage government agencies from using "brand" names as part of the specifications. The use of "brand" names as part of specifications inherently limits competition and is not consistent with procurement regulations, which seek to promote overall economy, encourage competition, and should not be unduly restrictive in satisfying the government's needs. The International Equipment representative informed us that the fire trucks' specifications appeared to be "proprietary specification," or specifications of a particular vendor. In many instances the more than 100 pages of specifications for this procurement were "brand" specific.

Page 3 of 4
OPA-Rpt. Observation P.L. 27-99
April 15, 2005

Response:

I disagree with this statement. On the specifications issued to the vendors on page 7 of the General Requirements Section 1 under **Specifications** it does indicate or equivalent(s). GSA does discourage the use of brand names, however when brand names are used it is a matter of reference and not as a part of the required specification.

GSA ensures that the language “or equivalent” is indicated on all bid solicitations whenever the specifications make reference to a particular “brand” or model.

5. On page 6, item #4 you stated, “GSA should take a more active role in ensuring that an independent procurement process and review is conducted. GSA’s role in this emergency procurement was merely to process GFD’s request.”

Response:

I disagree with this statement. Although P.L. 27-99 waived procurement authority, GSA ensured due diligence was applied to the process. GSA issued request for quotations to three local vendors with the expertise of fire apparatus; GSA with the concurrence of GFD negotiated the cost, to ensure that the government was provided a reasonable cost for the needed supplies. **Therefore, GSA did take an active role in ensuring the best cost is provided to the government** and not just merely processing the request of GFD.

6. On page 6 item #5 you stated, “GSA should have obtained price comparisons from other sources such as the Federal GSA. By obtaining more proposals, the lower the price of the purchase is likely to be. OPA accessed the Federal GSA website and found quotations of fire trucks ranging from \$196,888. to \$241,780. Although these quotations did not include detailed specifications, our efforts suggest that lower prices could have been obtained.

Page 4 of 4
OPA-Rpt. Observation P.L. 27-99
April 15, 2005

Response:

I disagree with this statement. As earlier stated on your report, on page 4 Table 1 it indicated that GSA and GFD did request for a revised quotation from Mid Pacific Far East. In addition, on 21 March 2005, GFD representative did inform the OPA, Ms. Doris Flores Brooks that he did compare prices with the Federal GSA, in which E-One represented by Mid Pacific Far East, is listed as a successful bidder in the Federal GSA Schedule, however the specifications requested by GFD is not listed on the Federal GSA.

The GFD representative did state: "although the OPA accessed the website and found quotations ranging from \$196,888 to \$241,780 it cannot be used as comparison because the specifications are different from what GFD is requiring."

GSA will continue to improve the processes and to uphold the integrity within the procurement activities of this government.

Sincerely,


CLAUDIA S. ACFALLE
Chief Procurement Officer

Felix P. Camacho
Governor

Lourdes M. Perez
Director



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration
Government of Guam

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: 477-8836-8 • Fax Nos.: 472-4217/4207

Kaleo S. Moylan
Lt. Governor

Joseph C. Maujbusan
Deputy Director

Purchase of Fire Trucks

**Chronology of Events
2/06/04**

EXHIBIT #1

- November 12, 2003- Funding was approved by the Office of Insular Affaris
- November 2003- GFD solicited numerous fire truck manufacturers and as a result received (4) responses namely: HME, Darley, Pierce and E-One who is represented by a local company Mid Pac Far East.
- December 11, 2003- Based on the In-service Fire Apparatus report dated Decmeber 11, 2003 only (4) structural fire pumpers were operable to service twelve fire stations throughout the island.
- Fire Chief Uncangco deemed it necessary and prepared a memorandum addressed to the Chief Procurement Officer (CPO) requesting that an emergency declaration under Subsection 5215 of the Guam Procurement Law be executed.
- December 12, 2003- GSA/CPO received the request for an emergency declaration from GFD.
- On the same day the CPO prepared a certification of emergency based on the justification provided by GFD due to public safety, health and welfare of this territory the CPO proceeded with the certification and forwarded to the Governor for his approval.
- December 13, 2003- The Governor approved the Certification of Emergency as justified by GFD.

Ag's office *ATTN: JOE GARDNER*
ACKNOWLEDGEMENT COPY

RECEIVE BY

Flora Sales

12/14/04

Page 2 of 4
Chronology 2/6/04
Fire Trucks

December 15, 2003- GSA received two (2) requisitions from GFD for the purchase of (3) structural pumper trucks.

Attached to the requisitions was a memorandum dated December 15, 2003 from the Fire Chief Uncangco recommending award to Mid Pac Far East.

December 17, 2003- GSA issued a request for quotation to Morrico Equipment Co. and International Equipment of Guam. The quotes were due on December 19, 2003.

GFD called to inquire why is GSA issuing quotations to other companies and not honoring the quotations submitted by GFD.

The CPO informed GFD that GSA will solicit locally with our local vendors prior to soliciting off-island.

December 19, 2003- The CPO had knowledge that the buyer issued a request for quotation on December 17 and required the vendors to submit their response in (2) days. To the CPO based on the technical nature of the specifications that (2) days was not adequate to submit response.

The CPO instructed the buyer to immediately issue a revised request for quotation and to indicate: "Ref: E One Pumper Unit Fire Engine or Equal" and to extend the due date for submission of quotations to December 26 that will allow the vendors adequate time to put together a quotation.

Morrico Equipment Co. acknowledged receipt of the revised request for quotation together with the detailed specifications on this date.

Page 3 of 4
Chronology 2/6/04
Fire Trucks

- December 20, 2003- GSA received a letter from Morrico Equipment Co. regarding several issues to include that specifications with this complexity require at a minimum seven business days to formulate an accurate price and delivery schedule.
- On December 19, GSA had already revised the submittal date and allowed the vendors a total of (10) days to submit their quotations.
- December 24, 2003- GSA received response from International Equipment of Guam indicating "No Bid" thank you for giving us this opportunity.
- December 26, 2003- GSA received quotation from Morrico Equipment Co. quoting on specifications from Rosenbauer with a price quote per unit of \$195,000.00 FOB West Coast Port Price and not to Guam.
- December 29, 2003- However, GSA contacted Fire Capt. Rueben Olivas to evaluate the specifications submitted by Morrico.
- December 30, 2003- GSA received a letter from Fire Capt. Olivas indicating that Morrico Equipment Co. did not meet the required specifications of the structural fire pumper trucks.
- Therefore, Morrico was deemed non-responsive due to failing to submit actual cost to the government but also did not meet specifications as required by GFD.
- December 31, 2003- CPO prepared a letter to the Speaker, 27th Guam Legislature of the Certification of Emergency approved by the Governor and attached the justification provided by GFD that was hand-carried to the office of the Speaker prior to making an award to Mid Pac Far East.

Page 4 of 4
Chronology 2/6/04
Fire Trucks

The Office of the Speaker acknowledged the letter on December 31, 2003.

A purchase order had to be awarded on December 31, 2003 due to expiration of funding source was December 31, 2003.

Based on Morrico's past record in doing business with the government it is a known fact that if not awarded Morrico is more than likely to file a protest.

Therefore, GSA and GFD decided due to the extreme emergency of the circumstances surrounding this procurement that a written determination to file be made to avoid any delay due to protest.

MESSAGE CONFIRMATION

JAN-03-2004 12:39 PM SAT

FAX NUMBER : 6714724217
NAME : GSA

NAME/NUMBER : 4723556
PAGE : 3
START TIME : JAN-03-2004 12:39PM SAT
ELAPSED TIME : 00' 24"
MODE : STD ECM
RESULTS : [O.K]

Felix P. Camacho
Governor
Lourdes M. Perez
Director



GENERAL SERVICES AGENCY
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Department of Administration
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Tel: 477-8836-8 - Fax Nos: 472-4217/4207

Kaleo S. Moylan
Lt. Governor
Joseph C. Menthwan
Deputy Director

December 31, 2003

Memorandum

To: Hon. Vicente "Ben" C. Pangelinan
Speaker, 27th Guam Legislature

From: Chief Procurement Officer

Subject: Emergency Procurement
(Public Transit Services & Structural Pumper Unit Fire Truck)

DEC 31 2003
RECEIVED BY: [Signature]

Buenas Yan Hafa Adai! Pursuant to the 5GCA Subsection 5215: Emergency Procurement attached are copies of emergency certifications for the Guam Fire Department and Department of Administration to include the statement of facts giving rise to the emergency.

If you have any questions you may contact me at 475-1700/1706.

Si Yu'os Ma'ase.

[Signature]
CLAUDIA S. ACFALLE

COMMITTED TO EXCELLENCE