



P.O. Box 10838, Tamuning Guam 96931
Tel: 473-4374 Fax: 473-4370

February 21, 2008

Doris Flores Brooks
Guam Public Auditor
Suite 401 Pacific News Building
238 Archbishop Flores Street
Hagatna, Guam 96910
Fax 472-7951

RECEIVED
OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

FEB 22 2008

TIME: 10:46 am
BY: via fax [signature]
FILE No. OPA-PA-07-010

Re: OPA-PA-07-010

Dear Mrs. Brooks,

I would like to supplement our appeal based on new information provided by the Port Authority of Guam (PAG) in its Agency Report to the Office of the Public Auditor (OPA). Currently the only reason that the PAG has indicated they rejected our primary bid, is that the Cummins engine that we offered does not meet the minimum horsepower specification of the bid.

The PAG agency report contains the awarded bidder's, Morrico Equipment, compliance statement of the bid specification sheet along with its detail quote number, MFQ07 612 R1, for the 40,000 lb forklift. I would like to point out that although the awarded bidder, Morrico Equipment, indicated it complies with the horsepower requirement in the bid specification, its detail quote clearly states that the Cummins engine it is offering is only rated at 220 horsepower @ 2000 rpm which is below the minimum requirement. It is important to note that the Cummins engine offered by Morrico equipment is the same exact Cummins engine Far East offered in our bid which was subsequently rejected for not meeting the minimum horsepower requirement. Had the GSA/PAG followed the procurement regulations of providing notice of intent to award to each unsuccessful bidder, our company would have requested for the successful bidders offer and pointed out the fact that the engine Morrico offered was the same engine our company had offered.

§ 3109 Competitive Sealed Bidding, (q)

Publicizing Awards. Written notice of award shall be sent to the successful bidder. In procurement over \$ 25,000.00, each unsuccessful bidder shall be notified of the award. Notice of award shall be made available to the public.

In this solicitation GSA/PAG provided notice only to Morrico Equipment of its intent to award and issued a purchase order prior to notifying unsuccessful bidders of Intent to award. The process of notifying bidders of award prior to the issuance of a purchase order is an essential step in the bid process. Notice of intent to award sent to an unsuccessful bidder starts the 14 day time clock for an unsuccessful bidder to make a review of the competitive offer and submit a protest if appropriate. This process allows procurement official to correct any errors made in its bid review prior to the issuance of a purchase order. This notice is especially important to a bidder who has submitted the lowest price for a specific bid item it was not awarded. This failure of GSA/PAG to provide a notice of intent to award is a clear violation of procurement regulation and should be treated appropriately.

Appellant request the OPA to rule that Appellant was the lowest responsible bidder for GSA/PAG 07-006 Item 4.1 and order GSA/PAG to award bid item 4.1 to Appellant. In the alternative Appellant request the OPA to order GSA/PAG to pay for Appellant's bid cost, Appeals cost, a reasonable profit the Appellant would have expected to receive, and for any other monetary damages or other equitable relief deemed appropriate. Anything less than equitable relief to Appellant would send the wrong message to GSA/PAG that failure to follow procurement regulations would only amount to a slap on the hand.

Sincerely,



John A. Limtiaco
Vice President

Cc: Dooley Roberts Fowler
Fax: 646-1223

General Services Agency
Fax: 472-4217

Lujan Aguigui & Perez LLP
Fax: 477-5297

Office of the Attorney General
Fax: 472-2493