

1 The Law Offices of John S. Unpingco & Associates LLC  
2 777 Route 4  
3 Suite 12B  
4 Sinajana, Guam 96910  
5 Telephone: 671-475-8545  
6 Facsimile: 671-475-8550

RECEIVED  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

JAN 23 2008

TIME: 3:30 PM  
BY: Anne Camacho  
FILE No. OPA-PA 08-001

4 Attorneys for Far East Equipment Co., LLC

5 OFFICE OF THE PUBLIC AUDITOR  
6 PROCUREMENT APPEAL

7  
8 IN THE APPEAL OF ,  
9 FAR EAST EQUIPMENT CO., LLC,  
10 Appellant.

Docket No. OPA-PA-08-001

**FAR EAST EQUIPMENT CO., LLC'S  
REPLY TO GUAM SERVICES AGENCY'S  
MOTION TO DISMISS**

11  
12  
13 The General Services Agency's (GSA) Motion to Dismiss the Appeal of Far East  
14 Equipment Company, LLC (FEEC) completely mischaracterizes Far East's appeal and the  
15 Motion is very misleading. Appellant's protest to GSA contended that its "bid met all the  
16 specifications of the IFB (sic), our bid price was reasonable, and our contract terms were in  
17 compliance with the Guam Procurement Rules and Regulations". See Exhibit 1. It was GSA in  
18 a bid status letter which said that it denied Appellant's bid based on "non-conformance with the  
19 specifications/requirements, high price and vendors recommended commercial deviations and  
20 contract terms not in compliance with the Guam Procurement Rules & Regulations. See Exhibit  
21 2. GSA appears to be confused. Thus, GSA totally mischaracterizes the reasons for Appellant's  
22 protest.

23 In fact, Appellant's protest was handicapped by the fact that the Port Authority of Guam  
24 (PAG) & GSA had not responded to Appellant's Sunshine Act request seeking "details as to  
25 what specifications we did not meet, the basis of the high price as we were the only bidder that

**ORIGINAL**

1 submitted a price, and the details of commercial deviations and commercial contract terms that  
2 are not in compliance with the Guam Procurement Rules & Regulations". The PAG Acting  
3 General Manager inquired with GSA and PAG Procurement staff if a response had ever been  
4 prepared and discovered that neither office had prepared a response "due to an administrative  
5 oversight and/or miscommunication". They apologized for their error. See Exhibit 3. Appellant  
6 did point out the disadvantage it had due to the lack of response to its Sunshine Act request in its  
7 protest letter as follows:

8           We are unable to respond with particularity to the Port Authority's reasons for  
9           rejecting our bid as despite our best efforts to ascertain specific information from  
10          the Port, we have received no response whatsoever. The Port's bid status to us  
11          was very cryptic (sic) and we have not received anything further that would shed  
12          light on the rejection of our bid.

13 Thus, Appellant never had a chance to address its concerns with GSA.

14           Next, GSA merely cites the headings of sections in Appellant's appeal to argue that the  
15          appeal is based on reasons different from Appellant's protest letter. One cannot judge a book by  
16          its cover. A plain reading of the Appeal puts forth the reasons Appellant's bid met all the  
17          specifications, why the bid price was reasonable and why the Appellant's contract terms were in  
18          compliance with the Guam Procurement Rules & Regulations. For example, Appellant's bid met  
19          all the specifications because the IFB was written as a multi-step sealed bidding and not a single-  
20          step sealed bidding and had negotiations occurred (as required by the IFB) its nonconformity to  
21          the IFB's crane specifications would have been easily resolved. Another example is the IFB's  
22          requiring that certain parts of the gantry crane be procured from PAG's suggested manufacturers.  
23          When Appellant included these parts in its bid which included the technical deviations mandated  
24          by these manufacturers, part of the reason for the rejection of Appellant's bid for non-  
25          conformance with the IFB included these manufacturers' technical deviations which Appellant  
26          had no control over and could not change. Yet, Appellant was never given the opportunity to

1 discuss this despite the IFB being written as a multi-step bidding process which called for such  
2 discussions.

3 As to Appellant's failure to file a timely protest within fourteen days, GSA has waived  
4 this by its acceptance of Appellant's protest and making a decision on Appellant's protest. *See*  
5 Exhibit 4. It is very disingenuous for GSA to now assert the untimeliness of Appellant's appeal.

6 In addition, 5 GCA § 5425 (a) states, in pertinent part:

7 ... The protest shall be submitted in writing within fourteen days after such  
8 aggrieved person knows or should know of the facts giving rise thereto.

9 The Port's bid status letter (a form letter) yields very little information as to the reasons for the  
10 rejection of Appellant's bid. *See* Exhibit 2. And, as previously stated, both GSA & PAG had  
11 admitted to not having responded to Appellant's Sunshine Act request due to an administrative  
12 oversight. Appellant's Sunshine Act request sought details as to which specifications were not  
13 met, the basis of the high price reason for rejection as Appellant was the only bidder that  
14 submitted a price, and the details of commercial deviation and commercial contract terms that  
15 were not in compliance with the Guam Procurement Rules & Regulations. *See* Exhibit 5. Based  
16 on the foregoing, Appellant did not "know of the facts giving rise" to the rejection of its bid.  
17 Therefore, the fourteen day time period had not yet run, and Appellant did point this fact out to  
18 GSA in its protest letter.

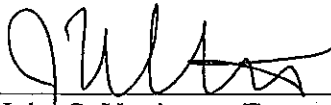
19 When Appellant reviewed GSA's letter dated December 28, 2007 (but received by  
20 Appellant on December 31, 2008) the facts supporting each reason for the rejection of  
21 Appellant's bid were clearly stated for the first time and Appellant's appeal to OPA was based  
22 on GSA's denial letter. However, Appellant was never given an opportunity to discuss the  
23 reasons and the facts behind the reasons for the rejection of its bid.

24 As to GSA's allegation that Appellant erred in its Notice of Appeal, Part III (c) and (d), it  
25 is obvious that GSA is in error as the decision appealed from is GSA's. *See* Exhibit 4.

1 In sum, this Motion is frivolous, totally mischaracterizes Appellant's appeal and is very  
2 misleading. The Motion to Dismiss is completely without merit and should be denied.

3 Dated this 23<sup>rd</sup> day of January, 2008.

4  
5 **The Law Offices of John S. Unpingco**  
6 **& Associates, LLC**

7 By:   
8 John S. Unpingco, Esq.  
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*The Law Offices of John S. Unpingco & Associates, LLC*

777 Route 4

Suite 12B

Sinajana, Guam 96910

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Facsimile: (671) 475-8550

[www.ualawguam.com](http://www.ualawguam.com)

12/21/07 4:10pm  
Port Authority of Guam  
General Manager's Office  
RECEIVED

December 21, 2007

Sent via hand delivery

Claudia S. Acfalle  
Chief Procurement Officer  
**General Services Agency**  
Government of Guam  
148 Route 1 Marine Corps Drive  
Piti, Guam 96915  
Via Facsimile Transmission: 472-4217

Kenneth T. Tagawa  
General Manager,  
**Port Authority of Guam**  
1026 Cabras Highway, Suite 201  
Piti, Guam 96925  
Via Facsimile Transmission: 477-2689

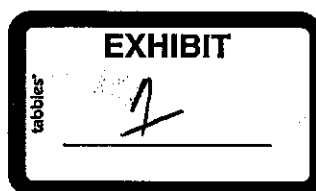
DATE: 12/20/07  
RECEIVED BY: [Signature]  
ACKNOWLEDGEMENT COPY

**RE: Bid Invitation PAG 07-007 (New Dockside Container Handling Gantry Crane)**

Dear Ms. Acfalle and Mr. Togawa,

This is a protest letter on the above-referenced solicitation. We received notification from GSA on November 29, 2007 that our bid had been rejected due to non-conformance with the specification/requirements, high price and "vendors recommended commercial deviations and commercial contract terms are not in compliance with the Guam Procurement Rules and Regulations". On the same day we sent a Sunshine Act request seeking "details as to what specifications we did not meet, the basis of high price as we were the only bidder that submitted a price, and the details of commercial deviations and commercial contract terms that are not in compliance with the Guam Procurement Rules and Regulations". As of this date, we still have not received a response to our Sunshine Act request.

Pursuant to 2 GAR § 9101, we provide the following:



a) Name and address of protestor:  
Far East Equipment Company, LLC  
PO Box 10838  
Tamuning, Guam 96931  
Telephone: 473-4375  
Cellular: 888-6270

b) Appropriate Identification of the Procurement:  
Bid Invitation PAG 07-007 (New Dockside Container Handling Gantry  
Crane);

c) Statement of Reasons for the Protest: Normally, a protest is filed within 14 days after the protestor knows or should have known of the facts giving rise thereto. In this case, while we were given notice of the status of our bid no details were provided. Accordingly, the 14-day protest period is inapplicable and this protest should be timely as under 2 GAR § 9101 (c) (1) the "or should have known of the facts" giving rise to a protest is still unfulfilled. Despite the lack of response to our Sunshine Act request, we must and do protest the rejection of our bid and contend that our bid met all the specifications of the bid, our bid price was reasonable, and our contract terms were in compliance with the Guam Procurement Rules and Regulations. Thus, the contract for the gantry crane should have been awarded to us. We are unable to respond with particularity to the Port Authority's reasons for rejecting our bid as despite our best efforts to ascertain specific information from the Port, we have received no response whatsoever. The Port's bid status correspondence to us was very cryptic and we have not received anything further that would shed light on the rejection of our bid.


d) Attached as Exhibit A is the Bid Status notification we received from the Port Authority. Attached as Exhibit B is our Sunshine Act Request.

As the attorneys for Far East Equipment we have been duly authorized to file this protest on behalf of the Company.

Your kind attention and prompt action and response will be greatly appreciated.

Sincerely,

THE LAW OFFICES OF JOHN S. UNPINGCO  
& ASSOCIATES, LLC



John S. Unpingco, Esq.

Felix P Camacho  
Governor



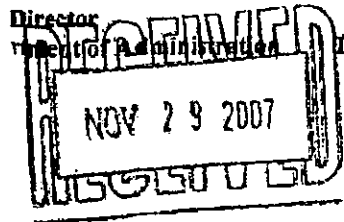
**GENERAL SERVICES AGENCY**

(Ahensian Setbision Hinirat)  
Department of Administration  
Government of Guam

Michael W. Cruz,  
Lt. Governor

Joseph C. Manibusan  
Deputy Director

Lourdes M. Perez



148 Route 1 Marine Drive, Piti, Guam 96915  
Tel: (671)475-1707 thru 1729; Fax Nos: (671)472-4217/475-1716

Department of Administration

November 28, 2007

473-4370 E  
Attention Mr. John Limtiaco

**BID STATUS**

Please Acknowledge Receipt and  
Fax to 475-1716/475-1727 and to  
472-1439

Mr. John Limtiaco  
Vice President  
Far East Equipment Company LLC  
P.O. Box 10838  
Tamuning, Guam 96931

Print/Sign/Date

BID INVITATION: PAG 07-007 Opened October 8, 2007  
DESCRIPTION: New Dockside Container Handling Gantry Crane

The following is the result of the above-mentioned bid. Refer to the items checked below:

- / / Canceled (in its entirety); or partially canceled due to:
  - ( ) Insufficient funds;
  - ( ) Change of specifications; or
  - ( ) Insufficient number of bidders
- / X / Rejected due to:
  - ( ) Late submission of bid;
  - ( ) No bid security or insufficient bid security amount submitted; as required by Section 11 of the General Terms and Conditions;
  - ( ) Not meeting the delivery requirement as stated in the IFB;
  - (x) Non-conformance with the specification/requirements;
  - ( ) Inability to provide future maintenance and service to the equipment;
  - (x) High price; or
  - (x) Others: Vendor's recommended Commercial Deviations and Commercial Contract Terms are not in compliance with the Guam Procurement Rules and Regulations.

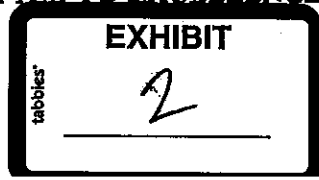
// Bid is recommended for award to:

REMARKS: Thank you for participating in this bid. Please have your authorized representative come by our office to pick up the original Bid Status and Bid Security Deposit.

CONCURRED BY:  
  
KENNETH T. TAGAWA  
General Manager, PAG

APPROVED BY:  
  
ANIFA T. CRUZ  
Assistant Chief Procurement Officer

COMMITTED TO EXCELLENCE





**FELIX P. CAMACHO**  
Governor of Guam

**MICHAEL W. CRUZ**  
Lieutenant Governor

**PORT AUTHORITY OF GUAM**  
**ATURIDAT I PUEYTON GUAHAN**  
**Jose D. Leon Guerrero Commercial Port**  
**GOVERNMENT OF GUAM**

1026 Cabras Highway, Suite 201  
Piti, Guam 96925



Telephone: (671) 477-5931/35

(671) 477-2683/85

Facsimile: (671) 477-2689/4445

Webpage: www.portofguam.com

RECEIVED  
12/26/07

December 26, 2007

Facsimile: (671) 475-8550

Mr. John S. Unpingco, Esq.  
Attorney-at-law  
The Law Offices of John S. Unpingco & Associates, LLC  
777 Route 4, Suite 12B  
Sinajana, Guam 96910

Re: Bid Invitation PAG 07-007 (New Dockside Container Handling Crane)

Dear Attorney Unpingco:

This is to acknowledge receipt of your letter dated December 21, 2007; same reference matter, as well as, its enclosures which consisted of the following:

1. A copy of Mr. John Limtiaco's e-mail dated November 29, 2007 addressed to Ms. Anita Cruz, Subject: PAG 07-007 Bid Rejection and Sunshine Request; and
2. An attachment to such e-mail—Facsimile Transmittal Sheet dated December 21, 2007 addressed to Anita T. Cruz and Kenneth T. Tagawa, Re: PAG07-007 Rejection Letter & Sunshine Request.

Upon receipt of your letter, this office inquired with General Services Agency and the Port Procurement staff if a response was prepared regarding Mr. Limtiaco's first sunshine request of November 29, 2007. It was discovered that neither General Services Agency nor the Port prepared a response due to an administrative oversight and/or miscommunication. We apologize for this error.

To ensure that Mr. Limtiaco's Sunshine request of December 21, 2007 is complied with, we have requested the Chief Procurement Officer of General Services Agency to make available the procurement file of IFB GSA/PAG 07-007, New Dockside Container Handling Crane, for your review. Please contact our Supply Management Administrator, Mrs. Marylyne R.P. Pecina, at 477-5931-4, extension 349 as to when you are available to review such files to ensure proper coordination with General Services Agency is made.

EXHIBIT

tabbles

3




Re: Bid Invitation PAG 07-007 (New Dockside Container Handling Crane)

Page 2

December 26, 2007

Should you have any questions, please feel free to contact this office at 477-5391-4, extensions 302 or 303.

Sincerely,

  
JOAQUIN P. CRUZ  
Acting General Manager

Cc: Chief Procurement Officer – GSA  
Chairman, Board of Directors  
General Manager  
Corporate Services Manager  
Supply Management Administrator  
Port Legal Counsel

Felix P. Camacho  
Governor



**GENERAL SERVICES AGENCY**

(Ahensian Setbision Hinirat)  
Department of Administration  
Government of Guam

148 Route 1 Marine Drive, Piti, Guam 96915

Tel: (671) 475-1707 thru 1729 • Fax Nos: (671) 472-4217/475-1727/475-1716

Michael W. Cruz, MD  
Lt. Governor

Lourdes M. Perez  
Director

Department of Administration

Joseph C. Manibusan  
Deputy Director

Department of Administration

December 28, 2007

John S. Unpingco, Esq.  
The Law Offices of John S. Unpingco  
& Associates, LLC  
777 Route 4 Suite 12B  
Sinajana, Guam 96910

**RECEIVED**

DEC 31 2007

John S. Unpingco 12:10 pm

UNPINGCO & ASSOCIATES, LLC

JSU m/c

Re: **Protest - Bid Invitation GSA/PAG 07-007 (One (1) New Dockside Container Handling Gantry Crane)**

Dear Mr. Unpingco:

Hafa Adai! This is to acknowledge receipt of your protest letter dated 21 December 2007 that was lodged on referenced bid number GSA/PAG 07-007.

Upon review of your protest it has been determined that your protest is without merit based on the following factual evaluations:

**Issue No. 1**

Bid rejected due to High Price.

**Response:**

The budgeted amount for the purchase of a new dockside container handling gantry crane is \$7M. The bid price submitted by Far East Equipment Company, LLC of \$9,698,250.00 was rejected due high price as noted on the bid status dated 28 November 2007.

**Issue No. 2**

Bid rejected due to non-conformance with specifications/requirements.

**Response:**

The bid submitted by Far East Equipment Company, LLC did not meet required specifications as follows: (Clause numbers are noted for reference)



## Technical Deviation – Electrical Part

1. Clause No. 1.5.3.1 & 1.5.3.2 – Deviation is not acceptable. ZPMC is meeting this requirement for the Virginia Port Authority STS cranes which is a current project. Project must have written description of control logic.
2. Clause No. 1.5.4 – Deviation is not acceptable, did not meet specification.
3. Clause No. 3.8.1 - Deviation is not acceptable, did not meet specification.
4. Clause No. 3.9.15 – Deviation is not applicable as cable reels with fiber optics is not used on cable reel.
5. Clause No. 5.5.2 – Outboxes refers to conduit outlet boxes. Galvanized cast iron boxes are acceptable. Aluminum is not acceptable.
6. Clause No. 5.6.5 – Deviation is not acceptable, flexible conduits must be grounded.
7. Clause No. 5.6.6.2 – Deviation is not acceptable, provide fiber optic run for future communication system as specified.
8. Clause No. 5.6.7 – Deviation is not acceptable, provide XLPE as specified.
9. Clause No. 5.6.7 – Deviation 4 is not acceptable, both ends of spare cable are to be labeled per specification.
10. Clause No. 5.6.8 – Deviation is not acceptable, stay with specification.
11. Clause No. 5.6.23 – Deviation is not acceptable, written confirmation by control supplier is required.
12. Clause No. 5.6.25 – Deviation is not acceptable for 600 V insulation rating; a 2000 V minimum insulation for gantry motor wiring is required per specification.
13. Clause No. 5.11.14 – Deviation is not acceptable, maintain software specification.
14. Clause No. 6.6.10 – Deviation is not acceptable, stay with specified maximum noise level in electrical room.
15. Clause No. 8.3.3.3 – Deviation is not acceptable, include in maintenance manual per specification.
16. Clause No. 9.4.3 – Deviation is not acceptable, the definition of trouble free shall be negotiated between PAG and ZPMC.

#### Technical Deviation – Mechanical Part

1. Clause No. 1.7 – Deviation is not acceptable, the gantry shall have eight wheels per corner and the stowed wind load factor shall be 1.6 for stability and LRFD wheel loads.
2. Clause No. 4.4.1.1 – Deviation is not acceptable, the allowable stress shall be 1.11 x the base stress.
3. Clause No. 6.4.9 – Deviation is not acceptable, stay with specified maximum noise level.

#### Technical Clarification – Electrical Part

1. Clause No. 5.6.16 – Clarification is not acceptable, GRF series does not meet the specification.
2. Clause No. 5.17.5.1 – Clarification is not acceptable, floodlights must be rapid start so lighting can be restored when power loss is corrected.
3. Clause No. 5.17.6 – Clarification is not acceptable, emergency aggress lighting must meet specification which includes outside lights down to ground level.
4. Clause No. 5.18.9.15 – Clarification is not acceptable, stay with specification.

#### Technical Clarification – Mechanical Part

1. Clause No. 1.7.7 – Clarification is not acceptable, most of the structure will likely be governed by the stowed wind condition, not earthquake loading. Some local reinforcement may be required at the leg-to-portal tie beam connection to meet the seismic strength requirements.

The earthquake wheel load combination, WOP6x and WS1x, are included for the Manufacturer to submit calculated loads, for reference only. Any allowable wheel loads shown in the specification for the earthquake combinations may be exceeded.

2. Clause No. 3.4.25 – Clarification is not acceptable, rail clips and pads shall be provided according to the specifications. Rail clips at hinge where Gantrex pad is not used may be ZPMC rail clips.

Technical Deviation from TMGE electrical control system

1. Clause No. 5.4.4 – Deviation is not acceptable, this refers to the maintenance manual which will be jointly assembled between TMGE and ZPMC. The contents of this paragraph must be considered.
2. Clause No. 5.5.8 – Deviation is not acceptable, the time to review the panels shall be included in the project schedule.
3. Clause No. 5.6.1 – Deviation is not acceptable, wiring is till subject to review.
4. Clause No. 5.9.3 – Deviation is not acceptable, provide totally enclosed motors as specified. Cooling shall be external.
5. Clause No. 6.26.2 – Deviation is not acceptable, use specified fiber optic for communication.

Issue No. 3

Commercial Contract Terms.

No. 1 of the proposed Commercial Contract Term: “**Effectiveness of the Contract**” states in part:

- 2) Two parties provide a Letter of Credit (by the Buyer) and the Performance Bond (by the Seller) to each other as stipulated in the Contract.
- 3) The Seller has received Advance Payment paid by the Buyer per the Contract.

Response:

Far East Equipment Company, LLC proposed Commercial Contract Term item number 2 & 3 under “Effectiveness of the Contract” is rejected due to non-compliance with item number 23 of the General Terms and Conditions of the bid. Item number 23 states in part: “No award shall be made under this solicitation which shall require **advance payment or irrevocable letter of credit** from the government”.

In addition, Pursuant to 5GCA §5007 Policy Against, Advance Payments: states in part: “With the exception of off-island orders of the Department of Education, no procurement shall be made under this Chapter which shall require advance payment.”

**Issue No. 4**

Performance Bond Requirement

Far East Equipment Company, LLC proposed Commercial Contract Term indicated a performance bond in the amount of ten percent (10%) of the total contract price.

**Response:**

A one hundred percent (100%) performance bond is required by Citizen Security Bank (CSB) as a part of the loan agreement. Therefore, the proposed Commercial Contract Term offered by Far East Equipment Company, LLC is rejected.

**Issue No. 5**

Liquidated Damages of the Late Delivery

**Response:**

Pursuant to 2GAR §6101(9)(a) states in part: "When the Contractor is given notice of delay or nonperformance as specified in Paragraph (1) (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one-percent (1%) ...." Therefore, your proposed percentage of 0.1% of the contract price per week is rejected.

The justification stated above is the reason for rejecting the bid submitted by Far East Equipment Company, LLC for non-conformance with the specifications, 5GCA §5007 Policy Against Advance Payment, Item #23 Bid Solicitation General Terms and Conditions, and high price, due to budgetary constraints.

Upon receipt of this letter it is our determination that your protest is without merit. You are therefore, notified of our determination and that you have a right to seek administrative and judicial review.

Sincerely,

  
CLAUDIA S. ACFALLE  
Chief Procurement Officer

cc: Attorney General, Office of the Attorney General  
General Manager, Port Authority of Guam

FAR EAST EQUIPMENT COMPANY LLC  
 P.O. BOX 10838, TAMUNING GUAM 96931  
 TEL: 671-473-4374 FAX: 671-473-4370

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Anita T. Cruz / Kenneth T. Tagawa	John Limtiaco
COMPANY:	DATE:
General Services Agency Assistant Chief Procurement Officer Port Authority of Guam General Manager	11/29/2007
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
472-4217	1
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
477-5933-35	
RE:	YOUR REFERENCE NUMBER:
PAG07-007 Rejection Letter & Sunshine Request	

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

Dear Mrs. Cruz,

We are in receipt of the bid rejection regarding Bid No. PAG 07-007 in which the rejection states that we are in non-conformance with the bid specifications/ requirements, High price, and vendors recommended commercial deviations and commercial contract terms are not in compliance with the Guam Procurement Rules and Regulations.

Please provide details as to what specifications we did not meet, the basis of high price as we were the only bidder that submitted a price, and the details of commercial deviations and commercial contract terms that are not in compliance with the Guam Procurement Rules and Regulations. When responding regarding compliance with the Guam Procurement Regulation, I would like to request you site the specific section of the regulations that we are not in compliance with.

We are also requesting copy's of all communications between GSA and PAG, and PAG and its consultants as it relates to this solicitation.

Sincerely,

John A. Limtiaco  
VP Managing Director

