

Suite 401 DNA Building
238 Archbishop Flores St.
Hagåtña, Guam 96910



FAX

To:	David L. Manning Head of Purchasing Agency Guam Solid Waste Authority Under the Management of Federal Receiver Gershman, Brickner, & Bratton, Inc. 542 North Marine Corps Drive Tamuning, Guam 96913	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 646-4379 x 201 or 212 (671) 649-3777	Pages:	6 (including cover page)
CC:	Kevin J. Fowler (Attorneys for Morrico Equipment, LLC)	Date:	January 5, 2015
Phone: Fax:	(671) 646-1222 (671) 646-1223	Phone: Fax:	475-0390 x. 203 472-7951

Re: OPA-PA-16-001 Notice of Receipt of Appeal

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Thank you,
Jerrick Hernandez
Auditor
jhernandez@guamopa.org

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OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

January 5, 2016

David L. Manning
Head of Purchasing Agency
Guam Solid Waste Authority
Under the Management of Federal Receiver
Gershman, Brickner, & Bratton, Inc.
542 North Marine Corps Drive
Tamuning, Guam 96911

VIA FACSIMILE: (671) 649-3777

Re: Notice of Receipt of Appeal – OPA-PA-16-001

Dear Mr. Manning,

Please be advised that Morrico Equipment, LLC (“Morrico”) filed an appeal with the Office of Public Accountability (OPA) on January 4, 2016 regarding the Guam Solid Waste Authority’s response to Morrico’s protest relative to Invitation for Bid No.: GSWA002-16; a procurement solicitation for rear loader refuse packer bodies. OPA has assigned this appeal case number OPA-PA-16-001.

Immediate action is required of GSWA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at www.opaguam.org. The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Tuesday, January 12, 2016**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Wednesday, January 20, 2016**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to Morrico. OPA respectfully asks that GSWA provide one original and two copies of the procurement record as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Llewelyn Terlaje at 475-0390 ext. 211, or lterlaje@guamopa.org, should you have any questions regarding this notice.

Sincerely,



Llewelyn Terlaje
Audit Supervisor

Enclosure: First Four Pages of Notice of Appeal – OPA-PA-16-001

Cc: Kevin J. Fowler, Attorneys for Morrico Equipment, LLC

Kevin J. Fowler
DOOLEY ROBERTS & FOWLER LLP
865 South Marine Corps Drive, Suite 201
Tamuning, Guam 96913
Telephone No. (671) 646-1222
Facsimile No. (671) 646-1223
E-mail: fowler@guamlawoffice.com

Attorneys for Appellant
Morrigo Equipment, LLC

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PROCUREMENT APPEALS

DATE: 01-04-16

TIME: 3:40 AM PM BY: MJ

FILE NO OPA-PA: 16-001

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of)
MORRICO EQUIPMENT, LLC,)
Appellant.)
_____)

**NOTICE OF PROCUREMENT
APPEAL**

Docket No. OPA-PA _____

Appellant Information:

Morrigo Equipment, LLC ("Morrigo")
197 Ypao Road
Tamuning, Guam 96931

Tel: 649-1946
Fax: 649-1947

Appeal Information:

- A) Guam Solid Waste Authority ("GSWA"), Under the Management of Federal Receiver, Gershman, Brickner & Bratton, Inc.
- B) Invitation for Bid No. GSWA0002-16; a procurement solicitation for rear loader packer bodies.
- C) Decisions being appealed are the GSWA's Denial of Procurement Protests, dated December 23, 2015.
- D) Appeal is made from decisions on protest of method, solicitation or award.
- E) Names of competing bidders:

Far East Equipment Company, LLC ("Far East").

ORIGINAL

Form and Filing:

1. On or about August 18, 2015, the GSWA let GSWA 004-15, an Invitation for Bid for rear loader refuse packer bodies (the "Prior IFB"). On September 14, 2015, Morrico submitted its bid on the Prior IFB. The GSWA conducted a bid opening on that same date. The only other bidder on the Prior IFB was Far East. The GSWA Abstract of Bids for Far East illustrated that it failed to submit the descriptive literature required by the IFB. On September 24, 2015, Morrico received a document titled "Bid Status", that informed Morrico that its bid was rejected for failing to meet the 90 day delivery time specification in the IFB and that the IFB would be re-bid.

On September 28, 2015, Morrico filed a protest with respect to the GSWA's rejection of its bid on the Prior IFB. Morrico based its protest on the fact that the GSWA could not reject Morrico's bid for failure to meet a ninety (90) day delivery specification, without otherwise complying with the provisions of 5 GCA § 5010. In a letter dated November 22, 2015, but received by Morrico's counsel on November 23, 2015, the GSWA denied Morrico's protest over the rejection of its bid because it believed the protest was untimely. GSWA also advised that the protest was moot because the GSWA was going to cancel the Prior IFB. Morrico appealed the denial of its protest to the OPA on December 7, 2015.

In a letter dated November 24, 2015, but received by Morrico on November 25, 2015, the GSWA purported to cancel the Prior IFB. The ostensible reason for the cancellation was that "in the best judgment of the Receiver continuing with the procurement would unreasonably delay the progress in meeting the mandates of the Consent Decree by endangering GSWA's immediate capacity to provide services to its customers thus endangering the revenue of GSWA. This revenue is essential to meeting the mandates of the Consent Decree."

In a letter dated December 7, 2015, and served on the GSWA on December 9, 2015, Morrico protested the GSWA's cancellation of the Prior IFB because it was issued while a stay of procurement was in effect under 5 GCA § 5425(g) as a result of Morrico's prior protest over the rejection of its bid and its appeal of the GSWA's denial of that protest to the OPA. In a letter dated December 10, 2015, and served on Morrico's counsel on December 11, 2015, the GSWA denied Morrico's protest over the cancellation of the Prior IFB. Morrico appealed that protest denial to the OPA on December 24, 2015.

On December 4, 2015, the GSWA let GSWA0002-16, another Invitation for Bid for rear loader refuse bodies (the "IFB"). *See, Exhibit A.* On December 16, 2015, Morrico filed its protest regarding the IFB because it was issued while a stay of procurement was still in effect due to the pendency of Morrico's appeal to the OPA of the Prior IFB and because Morrico's protest of GSWA's cancellation of the Prior IFB was still pending as well. *See, Exhibit B.* On December 17, 2015, Morrico filed another protest regarding the IFB based on the 90 day delivery time specification, which the GSWA had extended to 120 days by way of an IFB addendum. *See, Exhibit C.* The 120 day delivery time is an improper specification which restricts competition.

On December 23, 2015, GSWA served Morrico's counsel with two letters denying both protests. *See, Exhibits D and E.* In those letters, GSWA states that it is no longer following Guam procurement law. Rather, it claims that it is empowered to disregard Guam's procurement law based on the authority of the receiver in *United States of America v. Government of Guam*, District Court of Guam Civil Case No. 02-00022. GSWA further argued that "[t]he mandates of the Consent Decree simply cannot be met if GSWA is unable to reasonable and timely procure equipment necessary for its operations."

The GSWA's reliance on the status of GBB as a federal receiver and the necessity to timely comply with the Consent Decree is unfounded and does not override local Guam procurement law. Although the GSWA argues that this IFB is of great importance to its ability to timely meet the mandates of the Consent Decree, it was not even important enough to include in the latest quarterly report that GBB filed with the District Court of Guam on October 21, 2015. *See, Exhibit F.* GBB did discuss other procurement issues in that report, but not the IFB at issue here. If the Receiver's neglect of GWSA vehicles was so severe as to jeopardize completion of Consent Decree projects, one would expect the receiver to so advise the District Court. Also, in the GSWA's September 4, 2015, letter denying Morrico's protest of the Prior IFB, it nowhere stated that the procurement of rear loader packer bodies was necessary to meet the mandates of the Consent Decree. *See, Exhibit G.*

In addition, the subject Consent Decree required that the government of Guam close the Ordot Dump, construct a cover so no further pollutants were discharged into waters of the United States, and construct an environmentally compliant new landfill. *See, Exhibit H.* The Ordot Dump is closed, work to seal it has progressed to near completion and a new environmentally sound landfill has been opened. The acquisition of rear loader packer bodies simply does not appear related to the fulfillment of the mandates of the Consent Decree, which have largely been met. Even if the rear loader packer bodies were necessary to meet the mandates of the Consent Decree, the express terms of the Consent Decree require that the projects mandated thereunder be performed in accordance with the procurement laws of the government of Guam. *See, e.g., Exhibit H, p. 11, ¶ 9(h)* ("DPW shall award a construction contract for the new MSWLF in accordance with applicable procurement rules and policies of the Government of Guam.").

Additionally, federal law governing receiverships expressly requires that a receiver operate the receivership property in conformance with local law, which would obviously include Guam's procurement law. *See, 28 USC section 959(b)* ("a ... receiver appointed in any cause pending in any court of the United States ... shall manage and operate the property in his possession as such ... receiver ... according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner of possessor thereof would be bound to do if in possession thereof."). Because a federal receiver is required to comply with local law, the GSWA, even if run by a federal receiver, cannot unilaterally trump the will of Congress in its

enactment of federal law requiring that a receiver operate the receivership property in compliance with local law.

2. Notwithstanding Morrigo's protests and OPA appeals related to the GSWA's procurement of rear loader packer bodies, Morrigo learned on December 30, 2015, that the GSWA proceeded with a bid opening on December 22, 2015. The GSWA conducted the bid opening one day before it served Morrigo with its December 23rd letters denying its protests regarding the IFB. The GSWA had previously respected the stay under 5 GCA section 5425(g), at least in part. It became clear that the GSWA felt a stay was dissolved when a protest was denied. However, it had never failed to observe the stay previously, at least to Morrigo's knowledge.

Knowing that it was not going to observe the stay, and knowing that Morrigo's protests and OPA appeals were still pending, the GSWA waited until after the bid opening to advise Morrigo that its protests were denied and that it would no longer respect the stay or Guam procurement law. And, in its letters denying Morrigo's protests, it did not even advise that it had proceeded with a bid opening the day before.

Given the foregoing, Morrigo requests that the OPA immediately proceed to enforce the stay of procurement arising under 5 GCA § 5425(g).

3. Morrigo further requests that the Office of Public Auditor ("OPA") rule that the GSWA's denial of Morrigo's protests was unreasonable, arbitrary, capricious and an abuse of discretion.

4. Morrigo has attached all supporting documents as exhibits hereto.

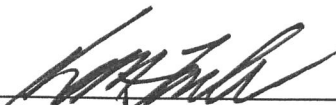
Declaration regarding court action:

Morrigo confirms that an action in court has not been commenced.

Dated this 4th day of January, 2016.

DOOLEY ROBERTS & FOWLER LLP

By:



KEVIN J. FOWLER
Attorneys for Appellant
Morrigo Equipment, LLC

TRANSACTION REPORT

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jhernandez@guamopa.org

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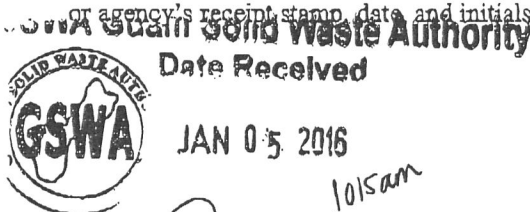
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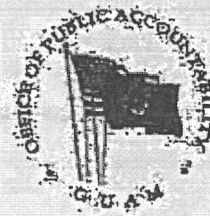


By: *[Signature]* *loisam*

Thank you,
Jerrick Hernandez
Auditor
jhernandez@guamopa.org

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Dooley Roberts & Fowler LLP

JAN 05 2016

10:14am TG.

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Jerrick Hernandez

Auditor

jhernandez@guamopa.org

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