



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

PROCUREMENT APPEALS

IN THE APPEAL OF,)	APPEAL NO: OPA-PA-13-001
)	
MORRICO EQUIPMENT, L.L.C.)	DECISION
)	
Appellant)	

I. INTRODUCTION

This is the Decision of the Public Auditor for appeal number OPA-PA-13-001 which was filed by MORRICO EQUIPMENT, L.L.C. (Hereafter Referred to as "MORRICO") on January 31, 2013 regarding the GENERAL SERVICES AGENCY, GOVERNMENT OF GUAM'S (Hereafter Referred to as "GSA") January 30, 2013 denial of MORRICO's January 23, 2013 protest concerning Multi-Step Bid No. GSA-005-13 (New and Current Year, Custom Cab-Forward Pumpers, New and Current Year, Urban/Wildland Interface Pumpers, and 5-Year Extended Service/Maintenance Agreements) (Hereafter referred to as "IFB"). The Public Auditor holds that GSA: (1) Violated 2 G.A.R., Div. 4, Chap. 4, §4103(b)(1)(c) by including two (2) costly and unnecessary inspection trips for two (2) GFD employees in the IFB specifications; and (2) Violated 5 G.C.A. §5268(a) and 2 G.A.R., Div. 4, Chap. 4, §4109(a) and §4103(b)(1)(c), and 5 G.C.A. §5010 by including a two-hundred-forty (240) day delivery time in the IFB specifications that unduly restricted competition; and (3) Violated 5 G.C.A. §5201(g) and 2 G.A.R., Div. 4, §3109(n)(2) and 2 G.A.R., Div. 4, Chap. 3, §3115(e)(3)(A) by finding MORRICO and MID PAC's Unpriced Technical Offers unresponsive and rejecting them. Accordingly, MORRICO's appeal is hereby SUSTAINED.

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II. FINDINGS OF FACT

The Public Auditor in reaching this Decision has considered and incorporates herein the procurement record and all documents submitted by the parties pursuant to GSA's March 13, 2013 Hearing Waiver and pursuant to MORRICO's March 14, 2013 Hearing Waiver. Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

1. On or about November 16, 2012, GSA issued the IFB on behalf of the Guam Fire Department (GFD).

2. The IFB stated, in relevant part, that:

a. The IFB was an indefinite quantity bid pursuant to 2 G.A.R., Div. 4, Chap. 3, §3119(i)(2).¹

b. Delivery was two-hundred-forty (240) days upon receipt of the purchase order and that schedule time and quantity will be coordinated between the successful bidder and GFD on an as needed basis.²

c. Bidders who are awarded a contract under this solicitation guarantee that goods will be delivered or required services performed within the time specified and that failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government of Guam. In addition, the Government will hold the vendor liable and will enforce the Government's rights to liquidated damages.³

d. Bidders shall comply with all specifications and other requirements of the IFB.⁴

e. All supplies, materials, equipment, or services delivered under the IFB shall be subject to inspection and/or tests conducted by the Government at destination. If in any case the supplies, materials, equipment, or services are found to be defective in material, workmanship,

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¹ Special Provisions, page 4, IFB, TAB 4, Procurement Record filed on February 11, 2013.

² Id.

³ Performance Guarantee, Paragraph 12, General Terms and Conditions, page 22, Id.

⁴ Compliance with Specifications and other Solicitation Requirements, Paragraph 6, Id.

1 performance, or otherwise do not conform with the specifications, the Government shall have the
2 right to reject the items or require that they be corrected and the number of days required for
3 correction will be determined by the Government.⁵

4 f. The contractor shall include in the bid/quote price, two (2) factory inspection
5 trips for two (2) representatives of GFD for the purpose of the pre-construction conferences for
6 the fire apparatus and final inspection before delivery of the unit(s). The conference will be held
7 after the contract has been signed so that all specifications, details, drawings, questions and
8 engineering work can be reviewed and approved by the department. This conference will be in
9 accordance with the build schedule of the manufacturer and will not in any way hold up the
10 construction of the unit. The conference will be held prior to the commencement of any work
11 being done on the chassis or the body. The respective persons will be in attendance at the
12 conference to authorize decision to be made on behalf of GFD. Trips shall be of such minimum
13 duration to allow for business at hand to be completed. This will also include all commercial
14 transportation, meals, and lodging that will be borne by the bidder. The pre-construction
15 conference shall be scheduled within thirty (30) calendar days after the award of contract.⁶

16 g. Bidders who are awarded contracts under the IFB guarantee that the goods will
17 be delivered to their destination or required services rendered within the time specified.⁷

18 h. It is understood and mutually agreed by and between the contractor and the
19 Government that the time for delivery to final destination or the timely performance of certain
20 services is an essential condition of this contract. If the contractor refuses or fails to perform any
21 of the provisions of this contract within the time specified in the Purchase Order (from the date
22 the Purchase Order is acknowledged by the contractor), then the contractor is in default.⁸

23 i. Award shall be made to the lowest responsible and responsive bidder, whose
24 bid is determined to be the most advantageous to the Government, taking into consideration the
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27 ⁵ Inspection, General Terms and Conditions, Paragraph 27, page 23, Id.

28 ⁶ Factory Inspection Trips, Specifications, page 91, Id. Note: page 32 Factory
Inspection Trips notes "bidder" instead of "contractor".

⁷ Justification of Delay, General Terms and Conditions, Paragraph 39, page 24, Id.

⁸ Time for Completion, General Terms and Conditions, Paragraph 38, Id.

1 evaluation factors set forth in the IFB, and no other factors or criteria shall be used in the
2 evaluation.⁹

3 j. The contractor will deliver the completed apparatus within 240 calendar days
4 upon receipt of purchase order, with all equipment specified, to the current headquarters of the
5 Guam Fire Department on Guam. The contractor must submit a firm delivery time (number of
6 calendar days from date of order to date of delivery) of said apparatus with the Unpriced
7 Technical Offer. Quoting number of days after receipt of all components is unacceptable. A
8 deduction of per day will be made for each day over and above the stated delivery date. The
9 penalty shall apply if the unit is delivered and rejected, until the unit is returned meeting
10 specifications.¹⁰ The contractor shall be liable for damages for delay in the amount of one-fourth
11 of one percent (1%) of outstanding order per calendar day from date set for cure until either the
12 territory reasonably obtains similar supplies or services or the contractor provides the supplies or
13 services.¹¹

14 k. The manufacturing company or bidding contractor shall post and maintain a
15 website where GFD will be able to view digital images of their apparatus as it is being
16 manufactured. The digital images shall be posted once a week starting when the body begins
17 production or when the cab/chassis arrives and shall continue until the final completion of the
18 apparatus.¹²

19 l. A contract (Purchase Order) will be awarded, as soon as practical, after the
20 review and evaluation of Phase I of the Unpriced Technical Offers. The Unpriced Technical
21 Offers received shall be evaluated by the following criteria and order of importance:

- 22 (1) Contractor's overall conformance to specifications;
- 23 (2) Contractor's logistical and service support;
- 24 (3) Warranty provisions;
- 25 (4) Manufacturing and delivery schedule; and

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27 ⁹ Award, Cancellation, & Rejection, General Terms and Conditions, Paragraph 22, page
23, Id.

28 ¹⁰ Delivery Terms, Specifications, page 32, Id. Note: page 91 Delivery Terms notes a
deadline of within 240 calendar days from the date of notice of award.

¹¹ Liquidated Damages, General Terms and Conditions, Paragraph 40, page 25, Id.

¹² Internet In-Process Site, Specifications, page 33, and Specifications, page 92, Id.

1 (5) Contractor's demonstrated capabilities and qualifications¹³

2 Based on the evaluation criteria, the contractor is eligible for a maximum of 100 points.¹⁴

3 m. In Phase I, bidders could score a maximum of twenty (20) points for the
4 Manufacturing and Delivery Schedule criteria. It includes a maximum of ten (10) points for the
5 manufacture and delivery timelines, a maximum of five (5) points for the acceptability of
6 transportation, shipping and delivery procedures, and a maximum of five (5) points for the
7 accessibility to manufacturing and transportation progress information.¹⁵

8 n. In Phase I, the bidders with a total of 80 – 100 points would be deemed
9 acceptable, the bidders with a total 60-79 points would be deemed potentially acceptable, and the
10 bidders with a total of 59 points and below would be deemed unacceptable.¹⁶

11 o. In Phase I, each of the bidders shall be evaluated on the five (5) evaluation
12 criteria previously stated and the bidder's sealed bid costs submitted with their Unpriced
13 Technical Offers would only be opened and considered after their Technical Offer had been
14 evaluated and determined by GFD to be acceptable in the first phase pursuant to 2 G.A.R. Div. 4,
15 Chap., 3, §3109(t).¹⁷

16 p. The bidders were required to submit their technical offers no later than
17 December 3, 2012 at 10:00 a.m.¹⁸

18 3. On or about November 30, 2012, GSA issued Amendment No. 1 for the IFB changing
19 the bid opening date from December 3, 2012 at 10:00 a.m. to December 14, 2012 at 10:00 a.m.¹⁹

20 4. On or about December 5, 2012, GSA answered MORRICO's written questions
21 concerning the IFB. MORRICO asked if the IFB's two-hundred-forty (240) day delivery date
22 was a delivery date to Guam and if so, requested that it be extended to 360 days. GSA stated
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25 ¹³ Award of Contract, Specifications, page 31, and Specifications, page 90, IFB.

26 ¹⁴ Phase I, Technical Bid Evaluation Criteria, page 116, Id.

27 ¹⁵ Id.

28 ¹⁶ Id.

¹⁷ Id.

¹⁸ Multi-Step Sealed Bid, page 3, Id. NOTE: The IFB uses the Term "Technical Bid," however, pursuant to 2 G.A.R., Div. 4, Chap. 3, §3109(r)(1), the correct term is "Unpriced Technical Offer," and that is the term the OPA will use throughout this Decision.

¹⁹ Amendment No. 1, dated November 30, 2012, Tab 6, Id.

1 that, based on other vendors, these trucks can be delivered within the two-hundred-forty (240)
2 day time period for delivery specified by the IFB, and denied the request for extension.²⁰

3 5. On or about December 14, 2012, GSA received Unpriced Technical Offers from FAR
4 EAST EQUIPMENT (Hereafter Referred to as "FAR EAST"), MID PAC FAR EAST (Hereafter
5 Referred to as "MID PAC"), and MORRICO.²¹

6 6. On or about January 23, 2013, GSA issued a notice to FAR EAST advising it that
7 their Unpriced Technical Offer was deemed acceptable and invited FAR EAST to participate in
8 Phase II of the Multi-Step Bid on January 24, 2013.²²

9 7. That same day, GSA issued notices to MORRICO and MID PAC advising them that
10 their Unpriced Technical Offers were rejected due to non-conformance with the IFB's two-
11 hundred-forty (240) day delivery requirement.²³

12 8. MORRICO received the aforementioned notice on January 23, 2013.²⁴

13 9. On January 23, 2013, the same day it received the aforementioned notice that its
14 Unpriced Technical Offer was rejected, MORRICO filed a protest with GSA alleging that GSA
15 failed to correctly follow the Technical Analysis procedure of the Multi-Step Bid Process by
16 rejecting MORRICO's Unpriced Technical Offer instead of awarding less points for a delivery
17 period longer than two-hundred-forty (240) days as set forth in the IFB.²⁵

18 10. On January 30, 2013, GSA denied MORRICO's January 23, 2013 protest, stating
19 that MORRICO's Unpriced Technical Offer was rejected solely because it did not conform to the
20 IFB's two-hundred-forty (240) day delivery requirement, that GSA could not waive this non-
21 conformity as a minor informality, and that GSA's evaluation committee did not score
22 MORRICO's Unpriced Technical Offer after it was rejected.²⁶

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25 ²⁰ GSA Response to Questions Submitted by MORRICO, November 23, 2012, Tab 7, Id.

²¹ Abstract of Bids - Multi-Step-Bid, Tab 5, Id.

²² Letter dated January 23, 2013 from Claudia S. Acfalle, GSA Chief Procurement
26 Officer, to FAR EAST, Tab 8, Id.

²³ Letters dated January 23, 2013 from Claudia S. Acfalle, GSA Chief Procurement
27 Officer, to MORRICO and MID PAC, respectively, Id.

²⁴ Acknowledgement Copy, Letter dated January 23, 2013 from Claudia S. Acfalle, GSA
28 Chief Procurement Officer, to MORRICO, Id.

²⁵ MORRICO'S Protest dated January 23, 2013, Tab 1, Id.

²⁶ GSA's January 30, 2013 Decision denying MORRICO'S January 23, 2013 Protest, Tab 2,
Id.

1 11. On January 31, 2013, only one (1) day after GSA issued its decision denying
2 MORRICO's January 23, 2013 Protest, MORRICO filed this appeal.

3 4 **III. ANALYSIS**

5 Pursuant to 5 G.C.A. §5703, the Public Auditor shall review GSA's January 30, 2013
6 Decision denying MORRICO's January 23, 2013 protest *de novo*. As a preliminary matter, the
7 Public Auditor must review the IFB's specifications which include the two-hundred-forty (240)
8 delivery requirement.
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10 **A. The IFB's Specifications Include Invalid Contract Terms and Restrict Competition.**

11 The IFB contains unreasonable inspection and delivery specifications. Generally,
12 specifications shall not include requirements which unnecessarily restrict competition and shall
13 include only the essential physical characteristics and functions required to meet the Government
14 of Guam's minimum needs. 5 G.C.A. §5268(a) and 2 G.A.R., Div. 4, Chap. 4, §4109(a).
15 Further, to the extent feasible, a specification must not include any solicitation or contract term
16 or condition, such as a requirement for time and place of bid opening, time of delivery, payment,
17 liquidated damages, or qualification of bidders. 2 G.A.R., Div. 4, Chap. 4, §4103(b)(1)(c).
18 Here, as stated above, the IFB's specifications included, in relevant part, the requirement for two
19 (2) factory inspection trips for two (2) GFD employees with the contractor awarded the IFB
20 paying for their airfare, commercial transportation, meals, and lodging expenses. The Public
21 Auditor finds that these trips do not concern the essential physical characteristics and functions
22 required to meet the Government of Guam's minimum needs. Generally, inspection
23 requirements are usually contract terms. However, the IFB should not be amended to include the
24 IFB's inspection requirements as contract terms because the IFB's aforementioned inspection
25 trips are unreasonably extravagant, unnecessary, and difficult to justify as valid contract terms.
26 As stated above, the IFB also required the contractor awarded the bid to post and maintain a
27 website where GFD can view digital images of the fire trucks being manufactured and these
28 images would be posted weekly from the start to the finish of their assembly. Additionally, as
stated above, GFD retained the right to reject the fire trucks if they were defective and the right

1 to require the contractor awarded the IFB to repair any defective workmanship. Thus, the Public
2 Auditor finds that the IFBs two (2) trips for two (2) GFD employees are invalid specifications
3 and an unnecessary extra cost.

4 The two-hundred-forty (240) day delivery specification is equally invalid. As stated
5 above, specifications must not unduly restrict competition and must not contain delivery times.
6 5 G.C.A. §5268(a) , 2 G.A.R., Div. 4, Chap. 4, §4109(a) and §4103(b)(1)(c). This specification
7 does both. As stated above, only one (1) out of the three (3) bidders who submitted Unpriced
8 Technical Offers could comply with the IFB's two-hundred-forty (240) day delivery
9 specification. Based on these results, the Public Auditor finds that the delivery specification is
10 unrealistic and unduly restricts competition. Although delivery times are usually contract terms,
11 the IFB should be amended to exclude the two-hundred-forty (240) day delivery time as a
12 contract term. GSA and GFD should have considered the reasonable time it would take to
13 custom build the fire trucks to the IFB's technical specifications when they issued the IFB. All
14 procurement of supplies and services shall, where possible, be made sufficiently in advance of
15 need for delivery or performance to promote maximum competition and good management of
16 resources and the publication of bids and requests for proposals shall not be manipulated so as to
17 place potential bidders at unnecessary competitive disadvantage. 5 G.C.A. §5010. Hence, the
18 two-hundred-forty (240) day delivery time could be the result of issuing the IFB too late to
19 receive the fire trucks when needed, or it could be a deliberate attempt to manipulate the
20 solicitation to award the contract to a preferred bidder. The Public Auditor finds that the IFB's
21 specification for a two-hundred-forty (240) day delivery time is invalid because it violates
22 5 G.C.A. §5268(a) and 2 G.A.R., Div. 4, Chap. 4, §4109(a) and §4103(b)(1)(c), and 5 G.C.A.
23 §5010. The Public Auditor will now review whether GSA correctly followed the Multi-Step
24 Sealed Bidding Process during the IFB solicitation.

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26 **B. GSA did not Properly Follow the Multi-Step Sealed Bidding Process.**

27 GSA did not correctly follow the Multi-Step Sealed Bidding Procedure. As stated above,
28 the IFB was a Multi-Step Bid. Multi-Step Sealed Bidding is a two (2) phase process consisting
of a technical first phase in which bidders submit an Unpriced Technical Offer to be evaluated by

1 the purchasing agency, and a second phase in which those bidders whose technical offers were
2 determined to be acceptable in the first phase have their priced bids considered. 2 G.A.R., Div.
3 4, Chap. 3, §3109(r)(1). One of the main benefits of this process is the solicitation of Unpriced
4 Technical Offers and the discussions between the bidders and the purchasing agency to
5 determine the acceptability of the Unpriced Technical Offers. 2 G.A.R., Div. 4, Chap. 3,
6 §3109(r)(1). The Multi-Step Bid process is used when the purchasing agency finds it desirable
7 to conduct these discussions to facilitate understanding of the Unpriced Technical Offers and the
8 purchase description requirements, and, where appropriate, to obtain supplemental information,
9 permit amendment of the Unpriced Technical Offers, or amend the purchase descriptions.
10 2 G.A.R., Div. 4, Chap. 3, §3109(r)(2)(b). Hence, this procedure has two (2) advantages over
11 regular Competitive Sealed Bidding. First, the communication between the purchasing agency
12 and the bidder should result in enhanced, mutual understanding of the purchasing agency's
13 requirements and the bidder's offer. The second advantage is the procedure's flexibility because
14 it allows the bidders to amend their Unpriced Technical Offers to fully meet the purchasing
15 agency's needs and it allows the purchasing agency to amend the IFB after these discussions to
16 ensure the bidders can meet the purchasing agency's requirements. The Multi-Step Sealed
17 Bidding Process, if followed correctly, ensures the purchasing agency gets these benefits. Phase
18 I of the procedure requires that the Unpriced Technical Offers submitted by the bidders be
19 evaluated solely in accordance with the criteria set forth in the invitation for bids, and be
20 categorized as acceptable, potentially acceptable, that is reasonably susceptible of being made
21 acceptable, and unacceptable. 2 G.A.R., Div. 4, Chap. 3, §3109(t)(4). The procurement officer
22 may conduct discussions with any bidder who submits an acceptable or potentially acceptable
23 Unpriced Technical Offer, and once discussions are begun, any bidder who has not been notified
24 that its offer was found unacceptable may submit supplemental information amending its
25 Unpriced Technical Offer at any time until the closing date established by the procurement
26 officer and such submissions may be made at the request of the procurement officer or upon the
27 bidder's own initiative. 2 G.A.R., Div. 4, Chap. 3, §3109(t)(5). The procurement officer may
28 initiate Phase II of the procedure, if in the procurement officer's opinion, there are sufficient
acceptable Unpriced Technical Offers to assure effective price competition in the second phase

1 without technical discussion and if the procurement officer finds that such is not the case, the
2 procurement officer shall issue an amendment to the IFB or engage in technical discussions. 2
3 G.A.R., Div. 4, Chap. 3, §3109(t)(4). Thus, the Multi-Step Sealed Bidding Process gives the
4 purchasing agency two (2) opportunities to conduct these valuable discussions with bidders
5 during Phase I. The first opportunity, which is at the discretion of the purchasing agency, occurs
6 after the bidders submit their Unpriced Technical Offers. The second opportunity is mandatory
7 and occurs if there are insufficient acceptable Unpriced Technical Offers to assure effective price
8 competition in Phase II and the purchasing agency does not amend the bid. The later scenario is
9 exactly what occurred here.

10 As stated above, GSA only received three (3) Unpriced Technical Offers. GSA did not
11 conduct the voluntary technical discussions with the bidders. Further, GSA only found the
12 Unpriced Technical Offer, from FAR EAST, acceptable. Also, GSA did not amend the IFB after
13 it received the Unpriced Technical Offers. Thus, the provisions of 2 G.A.R., Div. 4, Chap. 3,
14 §3109(t)(4) applied and GSA was mandated to conduct technical discussions. However, instead
15 of conducting these discussions, or amending the bid, GSA chose to reject the Unpriced
16 Technical Offers from MORRICO and MID PAC and proceed to Phase II of the Multi-Step
17 Sealed Bidding Process with only one (1) Unpriced Technical Offer. The Public Auditor finds
18 that GSA violated 2 G.A.R., Div. 4, Chap. 3, §3109(t)(4) by doing so.

19 GSA argues that it followed the Multi-Step Sealed Bidding Process because it only
20 received one (1) responsive Unpriced Technical Offer.²⁷ As stated above, the purchasing agency
21 must evaluate Unpriced Technical Offers using only the criteria set forth in the invitation for
22 bids. 2 G.A.R., Div. 4, Chap. 3, §3109(t)(4). GSA rejected MORRICO and MID PAC's
23 Unpriced Technical Offers solely because they did not comply with the IFB's two-hundred-forty
24 (240) day delivery requirement and GSA believes this makes them unresponsive.²⁸ The IFB's
25 plain language does not support this argument. After reviewing the entire IFB and IFB
26 Amendment No. 1, the Public Auditor finds that it does not contain any language stating that the
27 failure of a bidder to submit an Unpriced Technical Offer strictly complying with the two-

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²⁷ Page 2, GSA's Agency Report filed on February 14, 2013.

²⁸ Id.

1 hundred-forty (240) day delivery requirement would result in an automatic rejection of the
2 Unpriced Technical Offer. Further, Guam Procurement Law and Regulations do not support
3 GSA's argument that it could find an Unpriced Technical Offer to be unresponsive. A
4 responsive bidder is generally defined as a bidder who submits a **bid** which conforms in all
5 material respects to the IFB (Bold Emphasis Added). 5 G.C.A. §5201(g) and 2 G.A.R., Div. 4,
6 §3109(n)(2). The term "bid", for the purposes of determining responsiveness, only applies to the
7 bid submitted in the second phase of the Multi-Step Sealed Bidding Process. 2 G.A.R., Div. 4,
8 Chap. 3, §3115(e)(3)(A). Further, a bid submitted in the second phase of the Multi-Step Sealed
9 Bidding Process can be rejected if it is non-responsive, that is, it does not conform in all material
10 respects to the invitation for bids. 2 G.A.R., Div. 4, Chap. 3, §3115(e)(3)(A)(ii). Thus, the
11 Public Auditor finds no merit in GSA's argument that it received only one (1) responsive
12 Unpriced Technical Offer and no merit in GSA's argument that it properly rejected MORRICO
13 and MID PAC's Unpriced Technical Offers.

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15 **C. GSA must Amend the IFB to comply with Guam Procurement Law & Regulations.**

16 The Public Auditor finds that GSA must revise its solicitation to comply with Guam
17 Procurement Law and Regulations. If prior to award it is determined that a solicitation or
18 proposed award of a contract is in violation of law, then the solicitation or proposed award shall
19 be cancelled or revised to comply with the law. 5 G.C.A. §5451. As stated above, GSA violated
20 2 G.A.R., Div. 4, Chap. 4, §4103(b)(1)(c) by including two (2) unnecessary inspection trips for
21 two (2) GFD employees in the IFB specifications. GSA also violated 5 G.C.A. §5268(a) and 2
22 G.A.R., Div. 4, Chap. 4, §4109(a) and §4103(b)(1)(c), and 5 G.C.A. §5010 by including a two-
23 hundred-forty (240) day delivery time in the IFB specifications. GSA violated 2 G.A.R., Div. 4,
24 Chap. 3, §3109(t)(4) by proceeding to Phase II of the Multi-Step Sealed Bidding Process with
25 only one (1) Unpriced Technical Offer. Finally, GSA violated 5 G.C.A. §5201(g) and 2 G.A.R.,
26 Div. 4, §3109(n)(2) and 2 G.A.R., Div. 4, Chap. 3, §3115(e)(3)(A) by finding MORRICO and
27 MID PAC's Unpriced Technical Offers unresponsive and rejecting them. As these violations of
28 law occurred prior to award, GSA shall amend the IFB's specifications by deleting all

1 requirements which unnecessarily restrict competition, especially the two-hundred-forty-day
2 delivery requirement, and by deleting all solicitation or contract terms or conditions, such as a
3 requirement for time and place of bid opening, time of delivery or payment, liquidated damages,
4 or qualification of bidders, including the requirement for two (2) inspection trips paid for by the
5 contractor for two (2) GFD employees, and GSA shall ensure that only the essential physical
6 characteristics and functions required to meet the Government of Guam's minimum needs are
7 contained in the specifications. After the aforementioned amendment is issued, GSA shall
8 permit the bidders who submitted Unpriced Technical Offers to submit new Unpriced Technical
9 Offers or amend those they submitted in accordance 2 G.A.R., Div. 4, Chap. 3, §3109(t)(2).

11 IV. CONCLUSION

12 Based on the foregoing the Public Auditor hereby determines the following:

- 13 1. GSA violated 2 G.A.R., Div. 4, Chap. 4, §4103(b)(1)(c) by including two (2)
14 unnecessary inspection trips for two (2) GFD employees in the IFB specifications.
- 15 2. GSA also violated 5 G.C.A. §5268(a) and 2 G.A.R., Div. 4, Chap. 4, §4109(a) and
16 §4103(b)(1)(c), and 5 G.C.A. §5010 by including a two-hundred-forty (240) day delivery time in
17 the IFB specifications that unduly restricted competition.
- 18 3. GSA violated 5 G.C.A. §5201(g) and 2 G.A.R., Div. 4, §3109(n)(2) and 2 G.A.R.,
19 Div. 4, Chap. 3, §3115(e)(3)(A) by finding MORRICO and MID PAC's Unpriced Technical
20 Offers unresponsive and rejecting them.
- 21 4. MORRICO's Appeal is hereby SUSTAINED.
- 22 5. GSA's January 23, 2013 notice to FAR EAST that GSA would proceed to Phase II,
23 and GSA's notices to MORRICO and MID PAC advising them their Unpriced Technical Offers
24 were rejected due to non-conformance with the IFB's two-hundred-forty (240) day delivery
25 requirement are hereby deemed null and void *ab initio* and shall no longer have any force or
26 effect.
- 27 6. No later than thirty (30) days after this Decision is issued, GSA shall issue an
28 Amendment to the IFB, the IFB's specifications by deleting all requirements which

1 unnecessarily restrict competition, especially the two-hundred-forty-day delivery requirement,
2 and by deleting all solicitation or contract terms or conditions, such as a requirement for time and
3 place of bid opening, time of delivery or payment, liquidated damages, or qualification of
4 bidders, including the requirement for two (2) inspection trips paid for by the contractor for two
5 (2) GFD employees, and GSA shall ensure that only the essential physical characteristics and
6 functions required to meet the Government of Guam's minimum needs are contained in the
7 specifications. After the aforementioned amendment is issued, GSA shall give the bidders who
8 submitted Unpriced Technical Offers a minimum of thirty (30) days to submit new Unpriced
9 Technical Offers or amend those they submitted in accordance 2 G.A.R., Div. 4, Chap. 3,
10 §3109(t)(2). Thence GSA shall proceed with the solicitation in accordance with Guam's
11 Procurement Law and Regulations.

12 7. The Public Auditor finds that MORRICO is not entitled to its reasonable costs
13 incurred in connection with the solicitation and MORRICO's protest, excluding attorney's fees,
14 pursuant to 5 G.C.A. §5425(h), because it has not been determined whether MORRICO should
15 have been awarded the contract or whether there was a reasonable likelihood that MORRICO
16 may have been awarded the contract because three (3) bidders submitted Unpriced Technical
17 Offers and GSA did not score MORRICO's Unpriced Technical Offer to determine whether it
18 was acceptable, potentially acceptable, or unacceptable in accordance with 2 G.A.R., Div. 4,
19 Chap. 3, §3109(t)(4).

20 This is a Final Administrative Decision. The Parties are hereby informed of their right to
21 appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with
22 Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final Administrative
23 Decision. 5 G.C.A. §5481(a).

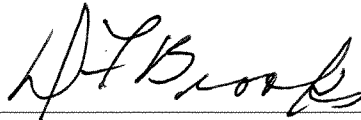
24 A copy of this Decision shall be provided to the parties and their respective attorneys, in

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1 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website
2 www.guamopa.org.

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4 **DATED** this 19th day of April, 2013.
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10 DORIS FLORES BROOKS, CPA, CGFM
11 PUBLIC AUDITOR
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