

Office of the Attorney General
Leonardo M. Rapadas
 Attorney General of Guam
Civil Division
 590 S. Marine Corps Drive
 Suite 706, ITC Building
 Tamuning, Guam 96913 • USA
 (671) 475-3324 • (671) 472-2493 (Fax)
 www.guamag.org

RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS
 DATE: 7/26/2013
 TIME: 2:00 AM PM BY: M.B.
 FILE NO OPA-PA: 13-008

Attorneys for the General Services Agency and Department of Public Works

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEAL**

IN THE APPEAL OF)	DOCKET NO. OPA-PA-13-008
)	
)	
)	
TRIPLE J. ENTERPRISES, INC.)	
)	OBJECTION TO APPEAL,
)	MOTION TO DISMISS
Appellant.)	

COMES NOW the Department of Public Works (DPW) and the General Services Agency (GSA) collectively the Government, through Counsel, Fred Nishihira, objecting to the Appeal filed by Triple J Enterprises (“Appellant”) and further moving the Public Auditor to dismiss the appeal of Triple J Enterprises filed on July 8, 2013 on the basis that Appellant failed to timely file the appeal. Appellant’s appeal was filed 19 days after GSA issued a decision to deny Appellant’s protest. (ref 5 GCA §5425(e))

ORIGINAL

BACKGROUND

On June 3, 2013 Appellant submitted a protest to GSA regarding the award of Invitation for Bid (IFB) GSA-0116-12, the purchase of school busses. (Attachment A) On June 4, 2013 GSA denied Appellant's protest. (Attachment B) On June 10, 2013 Appellant submitted a letter of clarification to GSA. (Attachment C) On June 11, 2013 Appellant submitted a revised letter of clarification to GSA. (Attachment D) On June 28, 2013 GSA responded to Appellant's revised letter dated June 11, 2013. (Attachment E). On July 8, 2013 Appellant filed this appeal.

ARGUMENT

The Appellant has failed to file a timely appeal to the Office of the Public Auditor and therefore the Public Auditor is without jurisdiction and must dismiss this Appeal. Appeals of an Agency decision should be made within 15 days of the Agency's issuance of a decision. 5 GCA § 5425(e) states:

(e) Appeal. A decision under Subsection (c) of this Section including a decision there under regarding entitlement to costs as provided by Subsection (h) of this Section, may be appealed by the protestant, to the Public Auditor **within fifteen (15) days** after receipt by the protestant of the notice of decision. (Emphasis added)

GSA denied Appellant's protest on June 4, 2013. The fifteenth day to file an appeal of GSA's decision to deny the protest was June 19, 2013. Appellant did not appeal GSA's decision until July 8, 2013 or 19 days late. The fifteen day clock began to run the day after the Appellant received GSA's decision to deny the protest. Appellant's two letters of clarification on June 10 and 11, 2013 and GSA's response letter dated June 28, 2013 do not

toll the 15 day statute of limitations set by 5 GCA § 5425(e). Because the Appellant has failed to meet the time limitation established by law, this appeal is not properly before the Public Auditor and therefore must be dismissed.

CONCLUSION

Appellant has failed to comply with the statute of limitation for filing an appeal within the 15 day time limit established by 5 GCA § 5425(e). Based on the aforementioned facts and arguments this appeal should be dismissed.

Dated this 26th day of July, 2013.

OFFICE OF THE ATTORNEY GENERAL
Leonardo M. Rapadas, Attorney General

By: 

FRED NISHIHIRA
Assistant Attorney General

Attachment

“A”



Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
Government of Guam
148 Route 1 Marine Corps Dr
Piti, Guam 96915

June 3, 2013

Dear Ms Acfalle;

The purpose of this letter is to officially protest the award of GSA-0116-12 and acceptance of the ten (10) new school buses recently received by the Department of Public Works for GSA

As a participant in the above procurement we are concerned that the buses received do not meet the following minimum required specifications:

1. Emergency Exits No's 1 thru 8 page 35 (Side Emergency Door)

Our bid included the Side Emergency Door, however we were rejected since it would reduce the passenger capacity from 84 to 83. We did however offer an "industry standard federally approved flip seat" which would have increased the capacity to 86.

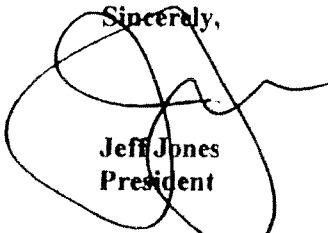
2. Construction: #3 The Body Panels are required to be fastened by anti-corrosive rivets. The buses received have Body Panels fastened by screws instead of rivets. This makes a substantial difference in the construction.

An additional requirement per Amendment #2 was for two DPW personnel to travel (bidder expenses paid) to the bus manufacturer for (4) Days for the purpose of inspecting the buses for "workmanship, quality conformance, first production vehicle". In light of the visit we are wondering why these deficiencies were not noted during the inspection and prior to shipment to Guam.

I am sure you can understand our frustration that our bid was rejected for a specification that was, in the end not provided by the winning bidder.

I look forward to your reply and resolution to this matter.

Sincerely,



Jeff Jones
President

C.C. Office of the Public Auditor
Office of the Attorney General

TRIPLE J MOTORS

P.O. BOX 6066 • TAMUNING, GUAM 96931 • TEL: (671) 648-6010 • FAX: (671) 648-6051
Cell: (671) 687-1280

00004

Attachment

“B”

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 475-1716

Ray Tenorio
Lieutenant Governor

Benita A. Manglona
Director

Anthony C. Blaz
Deputy Director

June 4, 2013

Memorandum

Mr. Jeff Jones
President
Triple J Enterprises
PO Box 6066
Tamuning, Guam 96931

Re: Protest on GSA Bid No. 0116-12

Dear Mr. Jones:

I am in receipt of your protest in regards to GSA Bid No. 0116-12, School Buses for the Department of Public Works. In your protest, you indicated that you were willing to offer a side emergency door that did not offer an 84 seat capacity, but rather an 83 seat capacity. Secondly, you indicated that you offered as an alternative, an "industry standard federally approved flip seat", which would offer 86 seat capacity.

Your second point was that buses that have arrived have body panels fastened by screws instead of rivets as required in the bid specifications.

Further you indicated that two (2) DPW personnel who were to travel to the bus manufacturer for the purpose of inspecting the buses did not catch these deficiencies and as such, were not noted prior to shipment to Guam.

Response to Inquiry No. 1: The Department of Public Works determined that its major need was for an 84 seat bus. The Department did not want a "flip seat" as they viewed such seating as more dangerous and less appropriate for use. The side door that is missing from the buses that are being accepted, have an upper emergency door exit, which they felt was a reasonable.

Response to Inquiry No. 2 In discussion with the Director of the Department of Public Works, he acknowledges that this was an oversight by his office in addressing this issue while the buses were at the manufacturer's even though it was raised by the DPW personnel on site.

Response to Inquiry No. 3: The DPW personnel who were sent to the Bus Manufacturer did catch errors. However, the errors were not fixed.

You are correct in pointing out that 1) the buses do not have a side door and 2) the changing the side door to an upper door, and the rivets to a screw were a deviation from the contract. However, none of the required items were deleted from the bus. The only change that was made was moving the side doors to the roof of the bus. Secondly the objecting of the rivets was identified by the two (2) DPW personnel that conducted an on-site or final inspection at the manufacturer's, however, upon inspection the buses arrived in Guam, the screws were not corrected by the manufacturer. However, since your protest was filed after the bid was awarded, your remedies are limited to that of Remedies After Award as stated in 5 GCA Section 5452. The bidder has not acted fraudulently or in bad faith, the contract is ratified as it is determined that it is in the best interest of the Territory.

You have the right to seek any administrative or judicial review authorized by law upon receipt of this notice.

Det H Kn 4/3/13
CLAUDIA S. ACFALLE
Chief Procurement Officer

CR
Charlie Reynolds

6/7/13

00013

Attachment

“C”



June 10, 2013

Claudia S Acfalle
Chief Procurement Officer
General Services Agency
Government of Guam
148 Route 1 Marine Corps Drive
Piti, Guam 96915

Dear Ms. Acfalle;

With respect to GSA's June 04, 2013 response to our Protest Letter of GSA Bid No. 0116-12 for School Buses, it seems the following facts and discrepancies may not have been fully understood by GSA. Please allow me to clarify.

With regard to the required side emergency door which is stated to have been "replaced with an upper emergency door exit" this cannot be the case as there is no such thing as an "upper emergency door". The only emergency safety devices on the roof are the required roof hatches referenced on page 35 & 36 of the bid specifications under, "Additional Emergency Exits". These roof hatches are not doors and, because of their distance from the floor, can only be used by children if the bus has fallen onto its side. If there were a fire or other emergency situation the children would not be able to safely use a "roof hatch" as an emergency exit.

Triple J's bid proposal included these required emergency roof hatches as well as the required Emergency Side Doors, (2) on each side, and the Required Rear Emergency Door. If Triple J had known that the side emergency exit requirements were going to be waived and not actually required as stated in the bid we could have offered a bus that met the 84 seat capacity without the need for a flip seat. However in order to comply with the emergency side door safety requirement AND still comply with the 84 seat capacity we had no choice but to offer the flip up seat option - which was the only reason our bid was rejected.

You also mention in your response that DPW determined that the flip up seats "were more dangerous and less appropriate for use". Please be advised that the flip seats are federally approved for use in school buses and are not dangerous at all. In fact flip seats with an emergency side exit are much safer than regular seats without any emergency side exits. Regardless of the importance, and potential safety issues involved, the side exits were still not provided by the awarded vendor. This is a fundamental deviation from the basic safety requirements of the bid specifications that should not be permitted by GSA.

TRIPLE J MOTORS

P.O. BOX 6066 • Tamuning, GU • TEL: (671) 648-CARS

00005



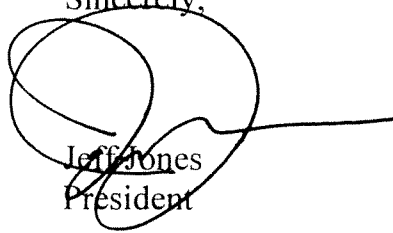
With regard to the rivet vs. screw issue, the explanation that this was an issue that was identified by the inspectors but was not corrected by the manufacturer cannot be accurate based on our research. Thomas uses screws in the manufacturing of their buses. They do not build buses with outside rivets - it is simply not part of the engineering or design of their products. Therefore they could not have agreed to correct this issue when discovered by the inspectors.

With regards to our protest being filed after the award, we believed that GSA would only award the bid if the vendor complied with all specifications. It was only after the buses arrived on island that we became aware of the discrepancies. We immediately filed our protest at that time.

Lastly we feel that the statement that "the bidder did not act fraudulently or in bad faith" may not be accurate. The bidder knew that their configuration did not offer side exits and they knew that their bus was not built with screws instead of rivets as required by the bid. As the authorized representative of their manufacturer, these issues would have been clear to them. Despite evidence to the contrary, we still contend that lack of fraud or bad faith is not justification for GSA or DPW to accept tax payer funded vehicles that do not meet minimum bid requirements, especially when the specifications are safety and construction related.

In closing we ask that GSA and DPW reject the buses for delivery until or unless the bidder can correct the deficiencies. If the deficiencies cannot be corrected the bid should be awarded to Triple J as the most responsible bidder.

Sincerely,



Jeff Jones
President

cc. Office of the Attorney General
Office of the Public Auditor

Attachment

“D”



June 10, 2013

REVISED: June 11, 2013

Claudia S Acfalle
Chief Procurement Officer
General Services Agency
Government of Guam
148 Route 1 Marine Corps Drive
Piti, Guam 96915

Dear Ms. Acfalle;

With respect to GSA's June 04, 2013 response to our Protest Letter of GSA Bid No. 0116-12 for School Buses, it seems the following facts and discrepancies may not have been fully understood by GSA. Please allow me to clarify.

With regard to the required side emergency door which is stated to have been "replaced with an upper emergency door exit" this cannot be the case as there is no such thing as an "upper emergency door". The only emergency safety devices on the roof are the required roof hatches referenced on page 35 & 36 of the bid specifications under, "Additional Emergency Exits". These roof hatches are not doors and, because of their distance from the floor, can only be used by children if the bus has fallen onto its side. If there were a fire or other emergency situation the children would not be able to safely use a "roof hatch" as an emergency exit.

Triple J's bid proposal included these required Emergency Side Door exits, roof hatches, emergency side windows – 2 on each side, and the Required Rear Emergency Door. If Triple J had known that the emergency side door exit requirements were going to be waived and not actually required as stated in the bid we could have offered a bus that met the 84 seat capacity without the need for a flip seat. However in order to comply with the emergency side door safety requirement AND still comply with the 84 seat capacity we had no choice but to offer the flip up seat option - which was the only reason our bid was rejected.

You also mention in your response that DPW determined that the flip up seats "were more dangerous and less appropriate for use". Please be advised that the flip seats are federally approved for use in school buses and are not dangerous at all. In fact flip seats with an emergency side exit are much safer than regular seats without any emergency side exits. Regardless of the importance, and potential safety issues involved, the side exits were still not provided by the awarded vendor. This is a fundamental deviation from the basic safety requirements of the bid specifications that should not be permitted by GSA.

TRIPLE J MOTORS
P.O. BOX 6066 • Tarnuning, GU • TEL: (671) 648-CARS

00007

Customers First



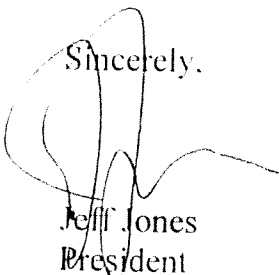
With regard to the rivet vs. screw issue, the explanation that this was an issue that was identified by the inspectors but was not corrected by the manufacturer cannot be accurate based on our research. Thomas uses screws in the manufacturing of their buses. They do not build buses with outside rivets - it is simply not part of the engineering or design of their products. Therefore they could not have agreed to correct this issue when discovered by the inspectors.

With regards to our protest being filed after the award, we believed that GSA would only award the bid if the vendor complied with all specifications. It was only after the buses arrived on island that we became aware of the discrepancies. We immediately filed our protest at that time.

Lastly we feel that the statement that "the bidder did not act fraudulently or in bad faith" may not be accurate. The bidder knew that their configuration did not offer side exits and they knew that their buses were built with screws instead of rivets as required by the bid. As the authorized representative of their manufacturer, these issues would have been clear to them. Despite evidence to the contrary, we still contend that lack of fraud or bad faith is not justification for GSA or DPW to accept tax payer funded vehicles that do not meet minimum bid requirements, especially when the specifications are safety and construction related.

In closing we ask that GSA and DPW reject the buses for delivery until or unless the bidder can correct the deficiencies. If the deficiencies cannot be corrected the bid should be awarded to Triple J as the most responsible bidder.

Sincerely,


Jeff Jones
President

cc. Office of the Attorney General
Office of the Public Auditor

TRIPLE J MOTORS
P.O. BOX 6066 • Tamuning, GU • TEL: (671) 648-CARS

00008

Attachment

“E”

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahenslan Setbision Hlnirat)
Department of Administration

Ray Tenorio
Lieutenant Governor

Benita A. Manglona
Director

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 475-1716

Anthony C. Blaz
Deputy Director

Memorandum

Mr. Jeff Jones
President
Triple J Enterprises
PO Box 6066
Tamuning, Guam 96931

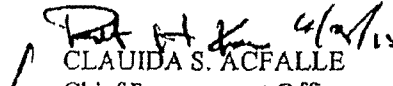
Re: Reconsideration on GSA Bid No. 0116-12

Dear Mr. Jones:

I am in receipt of your memorandum dated June 11, 2013,, in which you asked for reconsideration of the General Services' Agency response to your protest dated June 4, 2013. In you memorandum, you indicated what you perceived to be more information for our consideration.

We have carefully considered your memorandum, and have concluded that the facts you raised, are not sufficient to change our position and therefore, we stand by our initial denial of your protest.

You have the right to seek any administrative or judicial review authorized by law.


CLAUIDA S. ACFALLE
Chief Procurement Officer

ACKNOWLEDGEMENT COPY

RECEIVE BY 

DATE 6-28-13

Tel: 648.6010
Fax: 648.6051
Cell: 687.1200

COMMITTED TO EXCELLENCE

00014