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PROCUREMENT APPEALS
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10 **OFFICE OF THE PUBLIC AUDITOR**
11 **PROCUREMENT APPEALS**

13 IN THE APPEAL OF) **DOCKET NO. OPA-PA-13-015**
14)
15 MORRICO EQUIPMENT, LLC) **APPELLEE'S HEARING BRIEF**
16)
17 Appellant.)
18 _____)

21 **COMES NOW**, the GUAM POWER AUTHORITY, by and through its counsel of
22
23 record, D. GRAHAM BOTHA, ESQ., and submits its Hearing Brief for the December 16, 2013,
24 hearing as follows.

25 **ARGUMENT**

26 Guam Power Authority (GPA) submits that it properly awarded the bucket trucks to Mid
27 Pac Far East, the second lowest responsive bidder upon the default of the lowest responsive bidder,
28 Far East Equipment, when it failed to deliver in a timely manner in accordance with the
29 specifications in GPA-064-11, 55' bucket trucks. A responsive bidder is a person who submitted a
30 bid which conforms in all material respects to the Invitation for Bids. 5 GCA §5102(g), 2 GAR
31 Div. 4, §3109(n)(2). Minor informalities are matters of form, rather than substance evident from
32 the bid document, or insignificant mistakes that can be waived or corrected without prejudice to
33 other bidders; that is, the effect on price, quantity, quality, delivery or contractual conditions is
34 negligible. 2 GAR Div. 4, §3109(m)(4).

1 GPA determined that the proposal submitted by Mid Pac Far East of a 2013 International
2 chassis with an Altec AM55 boom satisfied in all material aspects the specifications set forth in the
3 Invitation for Bids in GPA-064-11. The evaluation committee reviewed the minor deviations
4 requested by Mid Pac and determined that those deviations, including the change of color from
5 John Deere yellow to white, were not material deviations, and recommended that GPA re-award to
6 Mid Pac Far East, after the default in delivery of Far East Equipment.

7 The two 55' bucket trucks supplied by Mid Pac Far East were in fact delivered to GPA in a
8 timely manner, met the specifications required by GPA, have been accepted by GPA, paid in full
9 by GPA, and are currently being used by GPA. There is no question regarding a stay of
10 procurement as in other recent OPA cases, and there are no further vehicles required to be
11 delivered under the IFB. GPA may, at its option, determine whether it will require the vendor to
12 supply vehicles in the option years.

13 There is no evidence that the contractor, Mid Pac Far East, has acted in bad faith in
14 procuring and delivering the two bucket trucks requested by GPA. The procurement of the bucket
15 trucks from Mid Pac was in the best interests of GPA and has resulted in the delivery of two fully
16 functional bucket trucks meeting GPA specifications.

17 **RESPECTFULLY SUBMITTED** this 13th day of December, 2013.

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D. GRAHAM BOTHA, ESQ.
GPA Legal Counsel