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FILE NO OPA-PA: 15-011

7 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**  
8 **PROCUREMENT APPEAL**

9 **In the Appeal of**

10 **MID PAC FAR EAST,**

11 **Appellant.**

) **Docket No. OPA PA-15-011**

)  
) **APPELLANT'S COMMENT TO**  
) **AGENCY REPORT**  
)

13 On October 21, 2015, Mid Pac Far East ("MPFE") received a copy of the General  
14 Services Agency ("GSA") agency report, identified in the caption as an "Answer". On October  
15 19, 2015, GSA filed a document with the OPA titled as an "Agency Report." No copy of this  
16 document was provided to MPFE. Only a copy of the "Tablet of Contents" of the October 19,  
17 2015 filing is available on the website for the Office of the Public Auditor, meaning that MPFE  
18 cannot review the contents of that filing.  
19

20 In an abundance of caution, to meet the ten-day filing deadline and ensure that the OPA  
21 is able to consider its position, MPFE hereby submits the following comments based on the  
22 "Answer" submitted by GSA. However, MPFE maintains that it has not received a copy of the  
23 document labeled as the "Agency Report" in the October 19, 2015 GSA filing at the OPA.  
24

25 **A. The Invitation for Bid Cannot Override or Sidestep Guam Procurement**  
26 **Regulations**

27 The basis of MPFE's protest is that a mistake in the form of a typographical error  
28 occurred in the transcription of the unit price in its bid and that the mistake as well as the

1 intended bid was evident on the face of the bid. In response, GSA has argued that the unit price  
2 must govern, regardless of mistakes, because item 2(c), of the bid instructions, located on page  
3 26, states that “[i]n the event of discrepancies between a unit price and extended price, the unit  
4 price will be presumed to be correct.”

5 GSA’s argument fails to account for the possibility that the unit price would be subject  
6 to a mistake. In that event, Guam’s procurement regulations governing mistakes still governs.  
7 There is no exception in the statute or the regulations that permits the GSA to ignore portions  
8 of the Guam procurement law or write out portions of the law through the instructions segment  
9 of an invitation for bid. Thus, while the GSA may have included instructions stating that the  
10 unit price would govern in the event of a discrepancy of between the unit price and the extended  
11 price, a mistake occurring in the unit price must still be corrected if the requirements of 2 GAR  
12 Division 4 Section 3109(m)(4)(C) are met.  
13

14  
15 **B. Guam Procurement Law Permits the Correction of Mistakes**

16 Guam procurement regulation 2 GAR Division 4 Section 3109(m)(4)(C) states that:

17 (C) Mistakes where intended correct bid is evident. If the mistake and the  
18 intended correct bid is clearly evident on the face of the bid document, the bid  
19 shall be corrected to the intended correct bid and may not be withdrawn.  
20 Examples of mistakes that may be clearly evident on the face of the bid  
document are typographical errors, errors in extending unit prices, transportation  
errors, and arithmetical errors.

21 Therefore, in order for an agency or the OPA to recognize and correct a mistake, (1) the mistake  
22 must be clearly evident on the face of the bid document and (2) the intended correct bid must  
23 be clearly evident on the face of the bid document. One example of a mistake cited by the rule  
24 is a typographical error.

25  
26 **C. A Mistake in the Unit Price is Clearly Evident on the Face of the MPFE Bid  
Submittal**

27 There are several indications on the face of the MPFE bid submittal that the unit price  
28

1 for line item 79.1 was the subject of a typographical error.

2 First, in every instance in the MPFE bid document where a unit price or price extension  
3 is noted to be a whole dollar figure, the entry is marked with zeroes following a decimal. For  
4 example, the unit priced for line item 82.1, line item 86.1, and line item 88.1 are marked as  
5 "\$6.00", "\$700.00", and "455.00", respectively. Line item 79.1 stands alone as the only line  
6 item unit price entry that defies the format used in the rest of the line item unit price entries.  
7 The unit price for line item 79.1 is entered as "\$537.", with the decimal at the end of the figure  
8 and no zeroes following the decimal. This discrepancy alone should have alerted GSA to the  
9 fact that a mistake in the form of a typographical error was made.  
10

11 Second, the extended price for line item 79.1 in the MPFE bid submittal reflects the unit  
12 price of \$5.37 multiplied by the 50 units requested by the GSA. The extended price is listed as  
13 \$268.50, not the exorbitant price of \$26,850.00 that OPA calculated and used to replace  
14 MPFE's extended price. This discrepancy between the unit price and the extended price should  
15 have alerted GSA to the fact that a mistake in the form of a typographical error was made.  
16

17 Third, Morrico, the only other bidder on line item 79.1, included a unit price of 9.04 in  
18 its bid submittal. The fact that the unit price, as it was understood by GSA to be \$537.00, was  
19 nearly sixty times the price offered by the only other bidder should have alerted GSA to the fact  
20 that a mistake in the form of a typographical error was made.  
21

22 Fourth, the fact that including the recalculated extended price for line item 79.1 in the  
23 MPFE bid, as GSA did, resulted in a total bid price that was \$26,581.50 greater than that with  
24 the correct extended price thereby rendering the bid bond submitted by MPFE insufficient,  
25 should have alerted GSA to the fact that a mistake in the form of a typographical error was  
26 made. Oddly, GSA appears to be taking the position that it is more plausible MPFE erred by  
27  
28

1 submitting a severely insufficient bid bond rather than that it erred by committing a  
2 typographical error in the unit price.

3 Lastly, the mistake was clearly evident given that common sense would dictate that one  
4 foot of heater hose for a bus at a 3/4 inch diameter could not possibly cost over 100 times that  
5 of one foot of heater hose for a bus at a 5/8 inch diameter. Line item 80.1 requests heater hose  
6 at a 5/8 inch diameter and the unit price included in the MPFE bid was \$5.35. The fact that line  
7 item 79.1 requested nearly the identical product as line item 80.1 and the unit price for 79.1  
8 appeared to GSA to be listed at over 100 times the unit price of line item 80.1 should have  
9 alerted GSA to the fact that a mistake in the form of a typographical error had been made.  
10

11 Instead of taking all of the facts noted about to consider than the unit price for line item  
12 79.1 was the subject of a typographical error, GSA went out of its way to exacerbate the error  
13 by calculating an absurdly disproportionate extended price, using that inflated price per roll to  
14 recalculate the total price of the bid, the recalculating a new bid bond amount, and declaring  
15 the bid bond insufficient, thus disqualifying the entire bid submitted by MPFE.  
16

17 Rather than recognizing the clear mistake for what it was, GSA bent over backwards to  
18 disqualify MPFE's bid in its entirety. As described below, GSA's decision, if sustained, will  
19 cost the taxpayers of Guam \$118,746.41.

20 **D. The Intended Unit Price is Clearly Evident on the Face of the MPFE Bid**  
21 **Submittal**

22 As noted above, the unit price for line item 79.1 was simply entered with a misplaced  
23 decimal. The fact that the unit price for line item 79.1 did not follow the same format as the  
24 rest of the unit prices in the MPFE bid submittal should have alerted GSA to the fact that a  
25 mistake occurred and that the decimal should have been moved two places to the left to result  
26 in a unit price of \$5.37. The correction could have also been checked by calculating backwards  
27 from the extended price to confirm that the correct unit price was \$5.37 and that the decimal  
28



1 had merely been moved as the result of a typographical error. No extraneous information would  
2 have been needed to find the correct bid number. Therefore, the correct price was clearly  
3 evident on the face of the bid document.

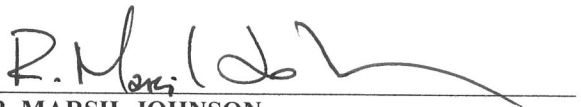
4 **E. The GSA's Decision to Reject MPFE's Bid in its Entirety by Ignoring the Obvious**  
5 **Typographical Error will Cost the Taxpayers of Guam \$118,746.41**

6 GSA's decision runs afoul of 5 G.C.A. § 5001(b)(5), which provides that one of the  
7 underlying principles and policies of the Guam Procurement Law is "to provide increased  
8 economy in territorial activities and to maximize to the fullest extent practicable the purchasing  
9 value of public funds of the Territory." Given that MPFE's bid has been rejected in its entirety,  
10 all of the line items for which MPFE was the lowest bidder will now go to the next lowest  
11 bidders.

12 Attached as Exhibit "A", is a spreadsheet in which the difference in the total price of  
13 GSA-093-15 is calculated if the GSA's decision is upheld and the MPFE bid is disqualified.  
14 As calculated, if the OPA upholds GSA's decision to ignore the obvious typographical error  
15 and go out of its way to disqualify MPFE's bid in its entirety will cost the taxpayers of Guam  
16 \$118,746.41.  
17

18 **DATED** this 29th day of October, 2015.

19  
20 **BLAIR STERLING JOHNSON & MARTINEZ**  
A PROFESSIONAL CORPORATION

21  
22 BY:   
23 **R. MARSIL JOHNSON**  
*Attorneys for Appellant Mid Pac Far East*

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25 G:\PLD\RMJ\093-COMMENT ON AGENCY  
26 REPORT RE MID PAC FAR EAST GSA-093-15.DOCX  
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**CERTIFICATE OF SERVICE**

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I, R. Marsil Johnson, do hereby certify that on the 29th day of October 2015, I caused a copy of the **APPELLANT'S COMMENT TO AGENCY REPORT** to be served upon the following, via hand delivery:

**Purchasing Agency:** Nicolas Toft  
Assistant Attorney General  
Civil Litigation Division  
590 S. Marine Corps. Dr.  
Tamuning, Guam 96913

**DATED** this 29th day of October, 2015.

**BLAIR STERLING JOHNSON & MARTINEZ**  
A PROFESSIONAL CORPORATION

BY:   
**R. MARSIL JOHNSON**  
*Attorneys Appellant Mid Pac Far East*

# EXHIBIT “A”

ITEM #	DESCRIPTION	MPFE		MORRICO		NAPA		PACIFIC PETROLEUM		DIFFERENCE MORRICO	DIFFERENCE NAPA	DIFFERENCE MPFE - PACIFIC	Additional Cost w/o MPFE Bid
		qty	cost	ext	cost	ext	cost	ext	cost				
1.1	FRONT LEAF SPRING ASSY WITH BUSHING	1.00	735.00	735.00	840.18	840.18	-	-	-	105.18	-	-	105.18
2.1	REAR LEAF SPRING WITH BUSHING	1.00	451.17	451.17	710.47	710.47	-	-	-	259.30	-	-	259.30
3.1	DRIVE BELTS	5.00	45.13	225.65	59.36	296.80	-	-	-	71.15	-	-	71.15
4.1	FUEL PUMP ASSY	1.00	1,374.00	1,374.00	1,657.16	1,657.16	-	-	-	283.16	-	-	283.16
5.1	BRAKE/TAI ASSY 7"	5.00	27.78	138.90	28.51	142.55	-	-	-	5.15	-	-	5.15
6.1	SOLENOID 12 VOLTS	5.00	38.68	193.40	30.54	152.70	-	-	-	15.96	-	-	15.96
7.1	CRANK SHAFT MAIN OIL SEAL (REAR)	2.00	6.61	13.22	17.55	35.30	-	-	-	21.88	-	-	21.88
8.1	TRANSMISSION OUT PUT SHAFT SEAL	2.00	348.28	696.56	352.27	704.54	-	-	-	9.00	-	-	9.00
10.1	KING PIN ASSY, LEFT	2.00	331.56	663.12	336.06	672.12	-	-	-	467.35	-	-	467.35
11.1	KING PIN ASSY, RIGHT	2.00	331.56	663.12	336.06	672.12	-	-	-	467.35	-	-	467.35
12.1	POWER STEERING HOSE ASSY	5.00	33.05	165.25	126.52	632.60	-	-	-	-96.10	-	-	-
13.1	POWER STEERING HOSE ASSY	5.00	84.93	424.65	65.71	328.55	-	-	-	-96.10	-	-	-
14.1	POWER STEERING HOSE ASSY	5.00	165.73	828.65	175.36	876.80	-	-	-	48.15	-	-	48.15
16.1	ENGINE COOLANT FULLY FORMULATED	2.00	642.61	1,285.22	784.00	1,568.00	-	-	1,008.00	282.78	-182.08	-277.22	-
17.1	FRONT BRAKE SHOES ASSY	20.00	77.24	1,544.80	177.37	2,547.40	-	-	-	1,002.60	-	-	1,002.60
18.1	REAR BRAKE SHOES ASSY	20.00	120.94	2,418.80	162.17	3,243.40	-	-	-	832.60	-	-	832.60
19.1	OIL COOLER ENGINE	1.00	350.00	350.00	369.87	369.87	-	-	-	19.87	-	-	19.87
20.1	KING PIN ASSY	2.00	257.84	515.68	266.87	533.74	-	-	-	18.06	-	-	18.06
22.1	TRANSMISSION ASSY W/ TOM	1.00	7,408.00	7,408.00	10,223.89	10,223.89	-	-	-	2,815.89	-	-	2,815.89
23.1	DRIVERS LGTH MONITOR	3.00	297.40	892.20	245.73	737.19	-	-	-	-155.01	-	-	-
24.1	ALTERNATOR ASSY	2.00	325.00	650.00	405.00	810.00	-	-	-	160.00	-	-	160.00
25.1	BRAKE SLACK ADJUSTER REAR	6.00	86.81	520.86	87.00	522.00	-	-	-	1.14	-	-	1.14
26.1	BRAKE SLACK ADJUSTER FRONT	6.00	86.81	520.86	105.91	635.46	-	-	-	114.60	-	-	114.60
27.1	FRONT WHEEL BEARING INNER WITH RACE	6.00	27.04	162.24	82.96	497.76	-	-	-	335.52	-	-	335.52
28.1	FRONT WHEEL BEARING OUTER WITH RACE	6.00	39.36	236.16	51.84	311.04	-	-	-	74.88	-	-	74.88
29.1	FRONT WHEEL BEARING SEAL	6.00	34.23	205.38	36.88	221.28	-	-	-	15.90	-	-	15.90
30.1	FRONT WHEEL BEARING CAP (HUB)	6.00	17.00	102.00	33.09	198.54	-	-	-	96.54	-	-	96.54
31.1	FUEL TRANSFER PUMP ASSY 12V	2.00	189.00	378.00	249.83	499.66	-	-	-	121.66	-	-	121.66
46.1	SECONDARY FUEL FILTER	2.00	29.50	59.00	39.36	78.70	-	-	-	197.20	-	-	197.20
47.1	RED UNLOADING LIGHT	5.00	60.84	304.20	33.04	165.20	-	-	-	-139.00	-	-	-
48.1	AMBER UNLOADING LIGHT	5.00	24.45	122.25	23.89	119.45	-	-	-	-2.80	-	-	-
49.1	HEAD LGTH SWITCH	5.00	27.20	136.00	49.35	246.75	-	-	-	110.75	-	-	110.75
50.1	GROUP 31 12 VOLT BATTERY REGULATOR POST	10.00	131.32	1,313.20	178.65	1,786.50	111.61	1,116.10	-	473.30	-197.10	-	-
51.1	BATTERY POST TERMINAL ADAPTOR	20.00	2.55	51.00	3.30	66.00	1.94	38.80	-	15.00	-12.20	-	-
52.1	CABLE ACCELERATOR 61"	5.00	81.64	408.20	90.00	450.00	-	-	-	41.80	-	-	41.80
53.1	BALL JOINT SOCKET INTERNAL SPRING	5.00	9.66	48.30	19.40	97.00	-	-	-	48.60	-	-	48.60
54.1	FREEZE PLUG	10.00	3.46	34.60	5.93	59.30	-	-	-	24.70	-	-	24.70
55.1	TREADLE VALVE BRAKE	5.00	94.44	472.20	104.25	521.25	-	-	-	49.05	-	-	49.05
56.1	POWER STEERING HOSE	5.00	51.67	258.35	58.00	290.00	-	-	-	31.65	-	-	31.65
57.1	FUEL TRANSFER PUMP ASSY	2.00	194.00	388.00	244.48	488.96	-	-	-	100.96	-	-	100.96
58.1	DRIVE BELT	5.00	45.13	225.65	58.66	293.30	-	-	-	67.65	-	-	67.65
59.1	TURN SIGNAL SWITCH ASSY	5.00	36.31	181.55	126.79	633.95	-	-	-	452.40	-	-	452.40
66.7	DRIVE BELT (SERPENTINE)	2.00	36.46	182.30	66.76	333.80	-	-	-	151.50	-	-	151.50
67.1	ALTERNATOR ASSEMBLY	2.00	751.17	1,502.34	883.96	1,767.92	-	-	-	265.58	-	-	265.58
70.1	E.G.R. VALVE ASSEMBLY (EXHAUST) WITH GASKET	4.00	600.00	2,400.00	696.94	2,787.76	-	-	-	387.76	-	-	387.76
74.1	ENGINE SPEED SENSOR	6.00	45.88	275.28	94.01	564.06	-	-	-	288.78	-	-	288.78
79.1	HEATER HOSE (3/4 INCH INNER DIAMETER) 50FT ROLL	1.00	268.50	268.50	452.00	452.00	-	-	-	172.00	-	-	172.00
80.1	HEATER HOSE (5/8 INCH INNER DIAMETER) 50FT ROLL	1.00	267.50	267.50	439.50	439.50	-	-	-	183.50	-	-	183.50
81.1	FUEL LINE HOSE (3/8 INCH INNER DIAMETER) 50FT ROLL	1.00	108.00	108.00	130.50	130.50	-	-	-	22.50	-	-	22.50
82.1	TRANSMISSION FILTER EXTERNAL	20.00	6.00	120.00	25.58	511.60	-	-	-	391.60	-	-	391.60
86.1	LEAF SPRING ASSEMBLY W/ BUSHING	2.00	700.00	1,400.00	857.38	1,714.76	-	-	-	314.76	-	-	314.76
87.1	RUBBER MATTING (FLOORING) SMOOTH	6.00	81.76	490.56	3,075.19	18,453.14	-	-	-	13,574.58	-	-	13,574.58
88.1	RUBBER MATTING (FLOORING) RIBBED	3.00	455.00	1,365.00	1,466.51	4,399.53	-	-	-	3,034.53	-	-	3,034.53
89.1	RUBBER MATTING (FLOORING) RIBBED	3.00	812.76	2,438.28	3,075.19	9,227.73	-	-	-	6,787.29	-	-	6,787.29
90.1	RUBBER MATTING (FLOORING) SMOOTH	3.00	812.76	2,438.28	3,075.91	9,227.73	-	-	-	6,789.45	-	-	6,789.45
91.1	RUBBER MATTING (FLOORING) RIBBED	3.00	455.00	1,365.00	1,466.51	4,399.53	-	-	-	3,034.53	-	-	3,034.53
92.1	CONTACT CEMENT	12.00	496.00	5,952.00	-	-	-	-	-	-595.20	-	-	-
95.1	DRIVE SHAFT ASSEMBLY	1.00	2,280.82	2,280.82	2,954.87	2,954.87	-	-	-	674.05	-	-	674.05
119.1	STEERING KNUCLE ASSY RIGHT SIDE	4.00	1,409.00	5,636.00	-	-	-	-	-	-563.60	-	-	-
120.1	STEERING KNUCLE ASSY LEFT SIDE	4.00	1,331.00	5,324.00	-	-	-	-	-	-532.40	-	-	-
125.1	HORN ASSY (HIGH)	5.00	18.56	92.80	24.90	124.50	-	-	-	31.70	-	-	31.70
126.1	HORN ASSY (LOW)	5.00	18.56	92.80	24.90	124.50	-	-	-	31.70	-	-	31.70
127.1	INJECTOR PUMP ASSY	2.00	2,898.00	5,796.00	2,660.00	5,320.00	-	-	-	-476.00	-	-	-
128.1	DIP STICK ASSY W/ HOUSING	10.00	130.59	1,305.90	386.86	3,868.60	-	-	-	2,562.70	-	-	2,562.70
129.1	TURN SIGNAL SWITCH ASSY	10.00	36.31	363.10	130.03	1,300.30	-	-	-	1,137.20	-	-	1,137.20
130.1	MARKER LGTH RED	20.00	4.44	88.80	4.15	83.00	-	-	-	-5.80	-	-	-







