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16-001

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8 *Guam Solid Waste Authority*

9 **BEFORE THE PUBLIC AUDITOR**
10 **PROCUREMENT APPEALS**
11 **TERRITORY OF GUAM**

12 IN THE PROCUREMENT APPEALS OF

) Docket No. OPA PA-15-014
) Docket No. OPA PA-15-017
) Docket No. OPA PA-16-001

13 MORRICO EQUIPMENT, LLC,

**AGENCY REPORT &
AGENCY STATEMENT**

14 Appellant.

15 **AGENCY REPORT**

16 The purchasing agency, the Guam Solid Waste Authority ("GSWA"), by and through its
17 attorney Vanessa L. Williams, Esq., hereby submits its Agency Report required under 2 GAR §
18 12105 as follows:

19 (a) Copy of Protest. See Submission of Procurement Record, filed concurrently
20 herewith;

21 (b) Copy of the Bid or Offer submitted by the Appellant and a copy of the Bid that is
22 being considered for Award. See Submission of Procurement Record, filed concurrently
23 herewith;

24 (c) Copy of the Solicitation. See Submission of Procurement Record, filed
25 concurrently herewith;

26 (d) Copy of the Abstract of Bids or Offers or Portions thereof Relevant to the
27 Protest.

28 See Submission of Procurement Record, filed concurrently herewith;

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AGENCY STATEMENT

GSWA denies the allegations in Morrico's appeal. The appeal should be dismissed. The Public Auditor lacks jurisdiction over disputes not "properly submitted" to her. 5 G.C.A. § 5703; 2 G.A.R. § 12103. The appeal is not "properly submitted" to the OPA because both the underlying protest and appeal are untimely. *See TRC Environment Corporation v. Office of the Public Auditor*, Superior Court of Guam Case No. SP160-07, Decision and Order p.5, Nov. 24, 2008 (matters not submitted in strict compliance with 5 G.C.A. § 5425 are not "properly submitted" to the OPA). Even if the Public Auditor finds she has jurisdiction over the appeal, the matter must still be dismissed based on the Public Auditor's recusal or disqualification from hearing the matter. 2 G.A.R. § 12601. Motions to Dismiss were filed in these appeals on December 23, 2015 and January 19, 2016. GSWA incorporates the Memorandum of Points and Authorities of both prior Motions to Dismiss into this Agency Statement by reference.

Notwithstanding this submission, GSWA maintains that the Public Auditor lacks jurisdiction to review the matters as the challenged decisions were made under the authority of the Federal Receiver under the District Court of Guam in CIVIL CASE NO. 02-00022. Therefore, GSWA, under the management of the Federal Receiver, has proceeded with IFB-GSWA002-16.

CONCLUSION

The matter should be dismissed based on the Public Auditor's lack of jurisdiction or disqualification and recusal from hearing the appeal.

Respectfully submitted this 26th day of February, 2016.



VANESSA L. WILLIAMS, ESQ.
Attorney for Guam Solid Waste Authority

1 (e) Any other Documents Relevant to the Protest. See Submission of Procurement
2 Record, which is incorporated herein by reference.

3 (f) Decision from which the Appeal is Taken. See Submission of Procurement
4 Record, filed concurrently herewith;

5 (g) Statement Answering the Allegation of the Appeal. A statement answering the
6 allegations of the Appeal and setting forth findings, actions, and recommendations in this
7 matter, together with additional evidence or information necessary to determine the validity of
8 Morrico's Appeal is attached;

9 (h) Determination of Award pursuant to 2 G.A.R. § 92101(e). See Submission of
10 Procurement Record, filed concurrently herewith;

11 (i) Statement Regarding Court Proceeding. A statement indicating whether the
12 matter is the subject of a court proceeding is being filed concurrently herewith, and is
13 incorporated herein by reference.

14 Respectfully submitted this 26th day of February, 2016.

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17 _____
18 VANESSA L. WILLIAMS, ESQ.
19 *Attorney for Guam Solid Waste Authority*