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OPA-PA-24-001, In the Matter of the Appeal of Morrico Equipment, LLC

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To: Jerrick Hernandez <jhernandez@guamopa.com>

Fri, Jul 26, 2024 at 3:33 PM

Hafa Adai Jerrick,

Camacho & Taitano LLP through Shannon Taitano, Esq., co-counsel for Guam Solid Waste Authority hereby submits this email filing regarding the above subject procurement appeal. This email consists of one (1) document, as follows:

- Guam Solid Waste Authority's Hearing Brief (**7 pages**)

Please let me know if you have any questions or issues with viewing or downloading the attachment. Have a great afternoon.

Thank you,
Camarine

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 **GSWA's Hearing Brief.pdf**
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Co-counsel for Purchasing Agency *Guam Solid Waste Authority*

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

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|------------------------------------|---|---|
| IN THE APPEAL OF: |) | Docket No. OPA-PA-24-001 |
| MORRICO EQUIPMENT, LLC, |) | |
| Appellant, |) | GUAM SOLID WASTE AUTHORITY’S HEARING BRIEF |
| vs. |) | |
| GUAM SOLID WASTE AUTHORITY, |) | |
| Purchasing Agency. |) | |

Morrigo knew about the specifications it now complains about when the Guam Solid Waste Authority (GSWA) published the Invitation for Bid (“IFB”) on November 3, 2023. Morrigo had actual knowledge that a John Deere model was used for some specifications and the clearance requirements no later than November 15, 2023. Morrigo decided not to challenge the specifications and instead elected to submit a bid that admittedly failed to comply with several specifications. Only after GSWA rejected Morrigo’s bid for noncompliance with the IFB did Morrigo protest that the procurement was unduly restrictive. Morrigo should not be allowed to now claim that the

1 procurement impermissibly held bidders to a brand specification and that Morrico's
2 deviated bid specifications are responsive to the IFB.

3 **BACKGROUND**

4 The IFB was published on November 3, 2023. The IFB expressly provided that
5 any reference in the solicitation to manufacturer's brand names is due to lack of a
6 satisfactory specification of commodity description. Procurement Record, p. 31. It
7 further went on to state that such preference is intended to be descriptive but not
8 restrictive and for the sole purpose of indicating to prospective bidders that a
9 description of the article will be satisfactory and comparable items will be considered
10 provided the bidder clearly states in its bid what is being offered and how it differs from
11 the original specification. *Id.* Notwithstanding the provision, the IFB did not reference a
12 brand name.
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15 Questions from prospective bidders on the specifications were answered and
16 distributed in the second and third week of November 2023. GSWA informed Morrico
17 that GSWA used the John Deere model 244P product to form the specifications of the
18 IFB on November 15, 2022. Procurement Record, p. 90. GSWA also responded to
19 Morrico's request for clarification regarding the single-wheel maximum and minimum
20 rise and fall specification on November 20, 2023. See Procurement Record, p.99.
21 GSWA made several amendments to the IFB specifications in response to some of
22 Morrico's questions. Procurement Record, pp. 48-51. GSWA also extended the
23 question period after the amendment but no questions were submitted.
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1 At no point prior to the opening of bids did Morrico protest the use of a John
2 Deere product to form the basis for some of the specifications, the required maximum
3 and minimum rise and fall, or the other seven specifications that it deviated from.
4 Instead, Morrico submitted a nonconforming bid and waited to protest when rejected.

5 Morrico's bid listed eight deviations without clearly explaining how it meets or is
6 comparable to the required specifications. Procurement Record, pp. 138-139. Morrico
7 specifically noted that its submission failed to comply with the max rise and fall, the
8 hydraulically driven, proportionally controlled fan or belt-driven fan, the multi-purpose
9 bucket, and the pick-up broom. *Id.*

10
11 Based on Morrico's concession that its bid failed to meet the bid specifications,
12 GSWA was required to reject Morrico's bid for nonconformance with the IFB.
13 Procurement Record, p. 252. Morrico protested on December 27, 2023, that the
14 product offered could not meet the IFB specifications because it was not a John Deere
15 244P make and model and that GSWA cannot restrictively apply the specifications of a
16 particular product. Procurement Record, pp. 355-359. The protest was denied on April
17 5, 2024. Procurement Record, pp. 370-372. Morrico appealed the decision.

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19 **ISSUES PRESENTED**

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21 1. Whether Morrico should benefit from sitting on its rights until after the
22 bids were opened.

23 2. Whether Morrico's failure to meet several of the bid specifications
24 renders the specifications unlawful.

1 disappointed offeror or bidder had notice of the grounds for the protest is barred as
2 untimely.” *Pacific Data Sys. v. GHURA*, OPA-PA-21-001, Dec. & Order re Mot. to
3 Dismiss for Lack of Juris. at 4 (July 16, 2021). Morrico had notice, since November 15,
4 2023, and no later than November 20, 2023, of the specifications it now protests. The
5 December protest is untimely. Therefore, Morrico’s appeal should be dismissed.
6

7 2. Morrico admitted in its bid that its Case machine failed to meet several
8 of the IFB specifications.

9 Morrico’s bid did not meet the specifications. The bid disclosed eight significant
10 deviations from the specifications. The IFB required a single wheel rise and fall 15 inch
11 maximum and 14 inch minimum. Procurement Record, p.143. Although Morrico claims
12 in its comment that its bid offered a machine with a ground clearance of between 12.5 -
13 17.3 inches, Morrico’s bid itself and Letter of Deviation offered a rise-and-fall single
14 wheel of 11.8 inches. Procurement Record, p. 143.

15 Morrico also disclosed that its fan deviated from the specifications. Even after
16 confirming with GSWA that a belt driven fan would be acceptable, Morrico instead
17 offered a fan directly connected to the engine. Procurement Record, p. 143. Morrico was
18 notified on November 13, 2023 that a direct driven fan will not be acceptable. Morrico
19 also failed to explain why the product should be acceptable, only saying that it did not
20 comply with the IFB specifications.
21

22 Morrico does not address the other IFB specifications it failed to meet.
23 Specifically, in addition to the wheel and fan, Morrico’s bucket and broom also did not
24 meet the IFB specifications. Procurement Record, pp. 143-144, 246. When Morrico
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1 submitted its bid and the deviations from the specifications, there was no explanation of
2 how the deviated specifications would meet the requirements of the IFB.

3 Morrico cannot now say that the IFB was unlawfully restrictive because its bid
4 was rejected when it submitted a nonconforming bid without explaining how its
5 deviated specifications would meet the IFB. Based on the number of significant
6 deviations from the IFB specifications, GSWA was within its authority to reject
7 Morrico's bid for non-conformance.
8

9 3. IFB was not a brand-name procurement.

10 The IFB did not solicit a brand name, and the specifications were not tailored to
11 procure a specific brand. The John Deere model was used as a basis for performance
12 specifications that other manufacturers can meet.
13

14 The procurement record shows that the IFB specifications were not unique to the
15 John Deere brand. A potential bidder pointed out that John Deere's broom attachment
16 does not require the high-flow hydraulics requested in the IFB. GSWA responded that
17 the brooms' hydraulic flow range asked for in the IFB is typical. Procurement Record, p.
18 243.

19 GSWA's General Manager asked the procurement division to prepare a spec
20 sheet using basic specifications. Procurement Record, p. 264. There was no reference
21 to John Deere in the request. Mr. Slike also told them to review the specifications and
22 add additional features. *Id.* GSWA conducted market research on the draft
23 specifications. Procurement Record, pp. 265-276. The published IFB specifications
24 amended the original draft based on market research and product availability. During
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1 the procurement process, the IFB specifications were again amended based on feedback
2 from potential bidders, including Morrico.

3 Although the John Deere model was the basis for some specifications, it was not
4 the final product. As mentioned, the specifications were modified and developed during
5 the market research and procurement process. It was pointed out that the broom
6 attachment requested was typical and not a John Deere model. Finally, the winning
7 bidder submitted a product that was not all supplied by John Deere, and several
8 products had to be sourced from other manufacturers to meet the IFB specifications.
9 Procurement Record, p. 368. The IFB was not specific to a brand name and, therefore,
10 not unlawfully restrictive.
11

12 **CONCLUSION**

13
14 Morrico’s protest was untimely. Furthermore, the Procurement law was not
15 violated. GSWA respectfully requests that the Public Auditor dismiss Morrico’s protest
16 or deny Morrico’s prayer for relief.

17 Dated: July 26, 2024.

18 **CAMACHO & TAITANO LLP**
19 Co-counsel for Purchasing Agency

20 By: 
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