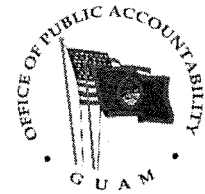


Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
		Pages:	9 (including cover page)
CC:	R. Marsil Johnson, Esq. (Attorney for Appellant Mid Pac Far East) Blair Sterling Johnson & Martinez 238 Archbishop Flores Street, Suite 1008 Hagatna, Guam 96910 Phone: (671) 477-7857 Fax: (671) 472-4290	Date:	November 28, 2017
		Phone:	(671) 475-0390 x. 208
		Fax:	(671) 472-7951

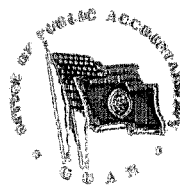
Re: OPA-PA-17-012 Notice of Receipt of Appeal

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

November 28, 2017

Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
Department of Administration
148 Route 1 Marine Drive
Piti, Guam 96915

VIA FACSIMILE: (671) 472- 4217/475-1727

Re: Notice of Receipt of Appeal – OPA-PA-17-012

Dear Ms. Acfalle,

Please be advised that Mid Pac Far East (MPFE) filed an appeal with the Office of Public Accountability (OPA) on November 27, 2017 regarding the General Services Agency's (GSA) response to MPFE's protest relative to Invitation for Bid No.: GSA PAG-025-17; a procurement solicitation for 11,000 Lbs. (5.5 Ton) Fork Trucks (New). OPA has assigned this appeal case number OPA-PA-17-012.

Immediate action is required of GCC pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at www.opaguam.org. The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Tuesday, December 5, 2017**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Wednesday, December 13, 2017**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to MPFE. In addition, OPA respectfully asks that GSA provide one original and two copies of the procurement record and agency report as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208, or jhernandez@guamopa.com, should you have any questions regarding this notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Yuka Hechanova". The signature is fluid and cursive, with the first letter of the first name being a large, stylized capital 'Y'.

Yuka Hechanova
Deputy Public Auditor

Enclosure: First Six Pages of Notice of Appeal – OPA-PA-17-012

Cc: R. Marsil Johnson, Attorney for MPFE.

R. MARSIL JOHNSON
 BLAIR STERLING JOHNSON & MARTINEZ
 A PROFESSIONAL CORPORATION
 238 ARCHBISHOP FLORES ST STE 1008
 HAGÁTÑA GU 96910-5205
 TELEPHONE: (671) 477-7857

Attorneys for Appellant Mid Pac Far East

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

In the Appeal of)
)
 MID PAC FAR EAST, LLC,)
)
 Appellant.)
)
 _____)

Docket No. OPA PA- 17-012

**NOTICE OF
 PROCUREMENT APPEAL**

MID PAC FAR EAST, L.L.C. (“MPFE”) hereby appeal a decision issued by the General Services Agency (“GSA”) and the Port Authority of Guam (“PAG”), both agencies of the Government of Guam, on November 14, 2017, denying a protest raised by MPFE regarding GSA/PAG’s Invitation for Bid No. GSA/PAG-025-17 11,000 Lbs (5.5 Ton) Fork Trucks (NEW).

PART II - APPELLANT INFORMATION:

Mid Pac Far East, L.L.C.
 474 Mendioka St.
 Dededo, Guam 96929
 Telephone: (671) 635-5891
 Email: craig.wade@jrvgroup.com

For purposes of this appeal, please direct and documents and correspondence to MPFE’s counsel:

R. Marsil Johnson
238 Archbishop Flores St, Ste. 1008
Hagåtña, Gu 96910
Telephone: (671) 477-7857
Facsimile: (671) 472-4290
Email: rmarsjohnson@bsjmlaw.com

PART III - APPEAL INFORMATION:

A. **PURCHASING AGENCY:** The General Services Agency and the Port Authority of Guam.

B. **IDENTIFICATION NUMBER OF THE PROCUREMENT, SOLICITATION, OR CONTRACT:** Invitation for Bid No. GSA/PAG-025-17

C. **DECISION BEING APPEALED:** Decision dated November 14, 2017, made by the head of the purchasing agency.

D. **APPEAL IS MADE FROM:** A decision on protest of method, solicitation, or award.

E. **NAMES OF COMPETING BIDDERS, OFFERORS, OR CONTRACTORS KNOWN TO APPELLANT:**

PART IV - FORM AND FILING:

This is a Procurement Appeal by Mid Pac Far East, LLC (“MPFE”) of the protest decision issued by GSA on November 14, 2017 in response to a protest letter submitted by MPFE on October 12, 2017.

In its protest letter, MPFE claimed that the color specification required by GSA/PAG-025-17 violates Guam procurement law as it unlawfully restricts competition by limiting the number of bidders and the ability of those bidders to compete. The color specification in question required bidders to provide equipment with a “Main Body Safety

Yellow and Black trimming” color. In issuing its protest decision, GSA claimed that MPFE’s protest was with merit, yet did not remove the color specification. Instead, GSA amended the color from “Main Body Safety Yellow and Black trimming” to “yellow and black trimming”, thus maintaining the restrictive color requirement that MPFE protested.

MPFE maintains that the color specification required by GSA/PAG-025-17, even as amended by the November 14, 2017 procurement decision, violates Guam law by improperly narrowing specification and unduly restricting competition.

Guam’s procurement law requires that “[a]ll specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Territory’s needs, and shall not be unduly restrictive.” 5 G.C.A. § 5265. This section is in line with the underlying purpose and policy of procurement law “to foster effective broad-based competition within the free-enterprise system.” 5 G.C.A. § 5001(b)(6). Further, Guam’s procurement regulations specifically state that “[s]pecifications shall not include requirements, such as but not limited to restrictive dimensions, weights or materials, which unnecessarily restrict competition, and shall include only the essential physical characteristics and functions required to meet the government of Guam’s minimum needs.” 2 G.A.R. § 4109(a).

The Office of Public Accountability itself has recognized in prior instances that “generally, specifications shall not include requirements which unnecessarily restrict competition and shall include only the essential physical characteristics and functions required to meet the Government of Guam’s minimum needs.” *Morrico Equipment, L.L.C.*, Appeal No. OPA-PA-13-001, 7 (2003).

The color specification is a non-essential characteristic of the subject equipment. No functional purpose has been attributed to the yellow and black specification by GSA or PAG. Furthermore, PAG currently uses equipment, purchased in January of 2017, that does not meet the yellow and black color specification. *See* Exhibit A through Exhibit I. The equipment shown in the exhibits are both orange and yellow. Further, the trim on all of the equipment is red and white. Therefore, even if the amended specification is seen as to limit the color specification only to the trim on the equipment, the fact remains that there is a great deal of equipment at the port that does not comply with that specification. Clearly, the colors specified in the equipment are not necessary for the safe or effective use of the equipment at the port if there is currently equipment being used at the port that do not meet the color specification.

The color specification also restricts competition based on brand as opposed to the minimum needs of the government of Guam. Heavy equipment of the type specified in this solicitation typically comes in one of two colors: orange and yellow. Whether a producer makes equipment that comes in yellow or orange depends on the producer's brand. By specifying that the solicited equipment come in yellow as opposed to orange, the solicitation is restricting the brands and companies that may bid on the solicitation.

MPFE requests that the Office of Public Accountability issue a ruling, ordering the General Services Agency and the Port Authority of Guam to remove the color specification from the GSA/PAG-025-17, in its entirety.


The following exhibits are enclosed herewith:

1. Exhibit A: Picture of PAG Equipment (both orange and yellow, with white and red trim) from GuamPDN.com article, dated January 6, 2017.
2. Exhibit B: Picture of PAG Equipment (both orange and yellow, with white and red trim) from GuamPDN.com article, dated January 6, 2017.
3. Exhibit C: Picture of PAG Equipment (both orange and yellow, with white and red trim) from GuamPDN.com article, dated January 6, 2017.
4. Exhibit D: Picture of PAG Equipment (both orange and yellow, with white and red trim) from GuamPDN.com article, dated January 6, 2017.
5. Exhibit E: Picture of PAG Equipment (both orange and yellow, with white and red trim) from GuamPDN.com article, dated January 6, 2017.
6. Exhibit F: Picture of PAG Equipment (both orange and yellow, with white and red trim) from GuamPDN.com article, dated January 6, 2017.
7. Exhibit G: Picture of PAG Equipment (both orange and yellow, with white and red trim) from kuam.com article, dated January 6, 2017.
8. Exhibit H: GuamPDN.com article about new PAG equipment, dated January 6, 2017.
9. Exhibit I: kuam.com article about new PAG equipment, dated January 6, 2017.
10. Exhibit J: MPFE Procurement Protest Letter, dated October 12, 2017.
11. Exhibit K: GSA Protest Decision Letter, dated November 14, 2017.

PART V - DECLARATION RE COURT ACTION:

The undersigned party does hereby confirm that to the best of his or her knowledge no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hour if court action commences regarding this Appeal or the underlying procurement action.

SUBMITTED this 24th day of November 2017.

By: 
R. MARSIL JOHNSON
Appellant's Duly Authorized Representative

cc: Claudia Acfalle – General Services Agency
Joanne Brown – Port Authority of Guam

Broadcast Report

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FAX

To:	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1737/475-4217	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
		Pages:	9 (including cover page)
CC:	R. Marsil Johnson, Esq. (Attorney for Appellant Mid Pac Far East) Blair Sterling Johnson & Martinez 238 Archbishop Flores Street, Suite 1008 Hagatna, Guam 96910 Phone: (671) 477-7857 Fax: (671) 472-4290	Date:	November 28, 2017
		Phone:	(671) 475-0390 x. 208
		Fax:	(671) 472-7951

Re: OPA-PA-17-012 Notice of Receipt of Appeal

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com

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