



Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

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**Filing Monster Auto Corp**

2 messages

**Christine McDonald** <christine@mcdonald.law>

Mon, Aug 24, 2020 at 3:21 PM

To: "admin@guamopa.com" <admin@guamopa.com>, "jhernandez@guamopa.com" <jhernandez@guamopa.com>  
Cc: "mwolff@oagguam.org" <mwolff@oagguam.org>, "erik@soderholmbus.com" <erik@soderholmbus.com>, Charles McDonald <charles@mcdonald.law>, Cristie Graniel <cgraniel@mcdonald.law>, Joseph McDonald <jbernard@mcdonald.law>

Hafa Adai:

Please find attached for filing the following documents:

1. Monster Auto Corp Motion to Dismiss;
2. Declaration of DMQ in Support of Motion to Dismiss.

Please confirm receipt of this filing. Feel free to contact me should you have any questions or concerns. Thank you!

**Christine McDonald****McDonald Law Office, LLC**

140 Aspinall Avenue, Suite 201

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**2 attachments** **Monster Auto Corp Motion to Dismiss 08-24-20.pdf**  
146K **Declaration of DMQ in Support of Motion to Dismiss 08-24-20.pdf**  
49K

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**Jerrick Hernandez** <jhernandez@guamopa.com>

Mon, Aug 24, 2020 at 3:54 PM

To: Christine McDonald &lt;christine@mcdonald.law&gt;

Cc: Office of Public Accountability &lt;admin@guamopa.com&gt;, "Matthew E. Wolff" &lt;mwolff@oagguam.org&gt;, "erik@soderholmbus.com" &lt;erik@soderholmbus.com&gt;, Charles McDonald &lt;charles@mcdonald.law&gt;, Cristie Graniel

8/28/2020

Guam OPA Mail - Filing Monster Auto Corp

<cgraniel@mcdonald.law>, Joseph McDonald <jbernard@mcdonald.law>

Confirming receipt.

[Quoted text hidden]

1 **McDONALD LAW OFFICE, LLC**

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4 Attorney for Interested Party Monster Auto Corp.

5  
6 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**  
7 **PROCUREMENT APPEAL**

8	IN THE APPEAL OF	)	<b>DOCKET No.: OPA-PA-20-006</b>
		)	
9	SODERHOLM SALES AND	)	<b>INTERESTED PARTY’S</b>
	LEASING, INC.,	)	<b>MOTION TO DISMISS APPEAL</b>
10		)	
	Apellant.	)	
11		)	
		)	

12  
13 COMES NOW Monster Auto Corp dba Auto Spot (“Auto Spot”), the winning bidder of  
14 Invitation for Bid: GSA-055-19, 14 Passenger ADA-Compliant Buses (the “IFB”), and hereby  
15 moves the Office of Public Accountability (“OPA”) for an order of dismissal of the Appeal  
16 lodged by Soderholm Sales & Leasing, Inc. (“Soderholm”) as the Appeal is without merit and  
17 not supported by evidence.

18 **I. BACKGROUND**

- 19 On September 18, 2019, GSA issued the IFB.
- 20 On May 29, 2020, GSA issued a Notice of Intent to Award the contract to Auto Spot.
- 21 On June 13, 2020, Soderholm submitted a procurement protest to GSA.
- 22 On June 22, 2020, GSA denied Soderholm’s procurement protest.
- 23 On June 29, 2020, Soderholm filed a Notice of Appeal with the OPA.

1 The Notice of Appeal listed the following grounds for appeal:

- 2 1. We were the lowest responsive and responsible bidder by \$4,474.20 per bus, as  
3 acknowledged and agreed to by Ms. Acfalle in her denial on 6/22/20. There can be no  
4 caveat after she agreed that we were the lowest responsive and responsible bidder. Being  
5 the lowest responsive and responsible bidder means we won the bid, and met all the terms.
- 6 2. Christine Tedtaotao of GSA asked us for a clarification of the location of the wheelchair  
7 lift due to very confusing bid specifications. We submitted the floor plan she wanted. She  
8 said she was satisfied.
- 9 3. The Pre-Award BUY AMERICA CERTIFICATION dated 2/17/20 by Forest River, the  
10 parent company of StarCraft Bus, the bus manufacturer that Monster Auto Spot bid, was  
11 untimely and defective. It should be submitted with the bid opening on 11/15/19.  
12 Additionally, Buy America certifications must add up to 100% showing domestic content  
13 of at least 70% and foreign content. The certificate shows an unaccounted amount of  
14 4.55% which means it effect it adds up to 104.55%. This is impossible. In the our 30+  
15 years of bidding U.S. FTA funded bus procurements and reviewing hundreds of Buy  
16 America certificates, we have never seen an unaccounted percentage. The certificate is a  
17 sham and defective. The Forest River Buy America Monster Autor Spot bid no longer  
18 meet the Buy America requirement of 70% domestic content.
- 19 4. Moreover, Cel Babauta, the GRTA Director, has no authority or knowledge to certify a  
20 Buy America certificate for Starcraft Bus, the bus manufacturer. He does not work for  
21 Starcraft Bus.
- 22 5. After two phone conversations with Christine Tedtaotao and one with Anita Cruz, over  
23 fifty phone messages and emails to Christine, Anita and Claudia were not returned. This  
24 is unfair and illegal to not answer us.
6. GSA has favored the high bid of Monster Auto Spot continually due to the close  
employment relationship with the Lieutenant Governor.
7. If a hearing is needed we request it be by Zoom or Charlie Reynolds of Triple J Motors  
be allowed to represent us.

19 Soderholm then requested for the bid to be terminated and a new IFB issued. *See* Notice of  
20 Appeal. On July 17, 2020, GSA filed its Agency Report and refuted all claims in the protest.

1 On August 10, 2020, Auto Spot filed its Comments to Agency Report. Soderholm did not file  
2 Comments to the Agency Report as required by the regulations.

## 3 II. DISCUSSION

4 2 GAR, Div. 4, Section 12104 outlines the requirements related to form and filing  
5 of an appeal with the OPA. Specifically, as part of the Appeal, Soderholm was required to file  
6 “supporting exhibits, evidence, or documents to substantiate any claims and the grounds for  
7 Appeal.” 2 GAR, Div. 4, Section 12104 (b)(4). Soderholm did not submit evidence, exhibits, or  
8 documents to support its grounds for appeal. As such, Soderholm’s Appeal should be dismissed  
9 under 2 GAR, Div. 4, Section 12104.

10 Below is a discussion of Soderholm’s grounds for appeal and its lack of exhibits,  
11 evidence, or documents to support the Appeal.

### 12 Grounds for Appeal:

- 13 1. We were the lowest responsive and responsible bidder by \$4,474.20 per bus, as  
14 acknowledged and agreed to by Ms. Acfalle in her denial on 6/22/20. There can be  
15 no caveat after she agreed that we were the lowest responsive and responsible bidder.  
Being the lowest responsive and responsible bidder means we won the bid, and met  
all the terms.

16 Lack of Evidence: GSA reported that Soderholm’s bid “was rejected as a result of non-  
17 compliance with specifications.” *See Agency Report*. Soderholm failed to present evidence  
18 proving that it submitted a bid that was compliant with the bid specifications. *See Declaration*  
19 *of Derrick Muna Quinata*. Instead, the evidence proves that Solderholm submitted a bid that did  
20 not comply with the bid specifications. *Id.* Specifically, the bid required the wheelchair lifts to  
21 be located curbside beside the front entrance but Soderholm submitted a bid for rear facing

1 wheelchair lifts. *Id.* Auto Spot submitted a bid that complied with the specifications. *Id.*

2 Therefore, the bid was properly awarded to Auto Spot.

- 3 2. Christine Tedtaotao of GSA asked us for a clarification of the location of the  
4 wheelchair lift due to very confusing bid specifications. We submitted the floor plan  
she wanted. She said she was satisfied.

5 Lack of Evidence: GSA reported that “there’s no documented evidence Christine Tedtaotao  
6 stated she was satisfied with the floor plan you presented on June 4, 2020 email for the location  
7 of the wheelchair lift. Her last email to your company was June 12, 2020 advising on the Bid  
8 Status and for acknowledgement.” *See Agency Report.* Soderholm failed to provide documented  
9 evidence that it satisfied the bid specifications. *See Declaration of Derrick Muna Quinata.*

- 10 3. The Pre-Award BUY AMERICA CERTIFICATION dated 2/17/20 by Forest River,  
11 the parent company of StarCraft Bus, the bus manufacturer that Monster Auto Spot  
bid, was untimely and defective. It should be submitted with the bid opening on  
12 11/15/19. Additionally, Buy America certifications must add up to 100% showing  
domestic content of at least 70% and foreign content. The certificate shows an  
13 unaccounted amount of 4.55% which means it effect it adds up to 104.55%. This is  
impossible. In the our 30+ years of bidding U.S. FTA funded bus procurements and  
14 reviewing hundreds of Buy America certificates, we have never seen an unaccounted  
percentage. The certificate is a sham and defective. The Forest River Buy America  
15 Monster Auto Spot bid no longer meet the Buy America requirement of 70% domestic  
content.

16 Lack of Evidence: Soderholm failed to provide evidence proving that Auto Spot did not submit  
17 a Pre-Award Buy America Certification. Auto Spot’s Pre-Award Buy America Certification was  
18 timely, as it was submitted “pre-award,” and it also satisfied the bid specifications. *See*  
19 *Declaration of Derrick Muna Quinata.* Soderholm also did not provide evidence showing that  
20 Auto Spot’s Pre-Award Buy America Certification was defective. Soderholm’s conclusory  
21 statements are not enough to prove a defect.

1 4. Moreover, Cel Babauta, the GRTA Director, has no authority or knowledge to certify  
2 a Buy America certificate for Starcraft Bus, the bus manufacturer. He does not work  
for Starcraft Bus.

3 Soderholm's argument here is meritless. GRTA Director Babauta did not issue a Starcraft Bus  
4 certification on behalf of Starcraft as alleged by Soderholm. GRTA Director Babauta carefully  
5 considered Auto Spot's Pre-Award Buy America Certification and he properly concluded that it  
6 satisfied the bid specifications.

7 5. After two phone conversations with Christine Tedtaotao and one with Anita Cruz,  
8 over fifty phone messages and emails to Christine, Anita and Claudia were not  
returned. This is unfair and illegal to not answer us.

9 Lack of Evidence: Soderholm's argument here is meritless. Soderholm's bid was rejected  
10 because of non-compliance with specifications (ref: Bid Status, May 29 provided to Soderholm).  
11 GSA followed all rules, regulations and bid procedures in accordance with 2 GAR, DIV 4 and 5  
12 GCA, CH 5. Soderholm failed to provide evidence showing that GSA did not follow its rules,  
13 regulations, and procedures.

14 6. GSA has favored the high bid of Monster Auto Spot continually due to the close  
15 employment relationship with the Lieutenant Governor.

16 Lack of Evidence: Soderholm did not provide any evidence to support this ground for appeal.  
17 Therefore, its Appeal should be dismissed.

18 Soderholm submitted the lowest bid for vehicles equipped with rear facing wheelchair  
19 lifts. However, the IFB required the lift to be located curbside beside the front entrance. As  
20 such, Soderholm did not comply with the bid specifications and its bid was rejected. Auto Spot  
21 was the lowest responsive bidder for this IFB because it bid the lowest price for vehicles that  
22 satisfied the bid specifications. Therefore, the bid was properly awarded to Auto Spot.

