



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

---

## Monster Auto Filings

---

**Matthew E. Wolff** <mwolff@oagguam.org>

Mon, Sep 14, 2020 at 5:00 PM

To: Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;, "Matthew E. Wolff" &lt;mwolff@oagguam.org&gt;

Cc: Charles McDonald &lt;charles@mcdonald.law&gt;, "erik@soderholmbus.com" &lt;erik@soderholmbus.com&gt;

Good evening, Jerrick, Chuck, and Erik,

Attached are GSA's List of Exhibits, List of Witnesses, and List of Issues for this case. Please confirm receipt.

thanks,

Matt Wolff

[Quoted text hidden]

---

### 3 attachments

 **GSA's List of Exhibits, Soderholm Bus Appeal, 9-7-20.docx**  
44K

 **GSA's List of Issues, Solderholm Bus Appeal, 9-14-20.docx**  
46K

 **GSA's List of Witnesses, Soderholm Bus Appeal, 9-9-20.docx**  
43K



**Office of the Attorney General**  
**Leevin Taitano Camacho**  
 Attorney General of Guam  
**Solicitor Division**  
 590 S. Marine Corps Drive  
 ITC Bldg., Ste. 802  
 Tamuning, Guam 96913 • USA  
 Tel. (671) 475-3324 Fax. (671) 472-2493  
 www.guamag.org  
**Attorneys for the Government of Guam**

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

<b>IN THE APPEAL OF:</b>	)	<b>DOCKET NO. OPA-PA-20-006</b>
	)	
<b>SODERHOLM SALES AND LEASING, INC)</b>	)	
	)	
<b>Appellant,</b>	)	<b>PURCHASING AGENCY’S</b>
	)	<b>LIST OF ISSUES</b>
<b>AND</b>	)	
	)	
<b>GENERAL SERVICES AGENCY,</b>	)	
	)	
<b>Purchasing Agency.</b>	)	
<hr/>	)	

**COMES NOW**, the Purchasing Agency, General Services Agency, (“GSA”), by and through its undersigned counsel, and herein files its List of Issues in the above-captioned matter.

## LIST OF ISSUES

- I. NONRESPONSIVENESS AND NONCOMPLIANCE OF APPELLANT
- A. Whether El Dorado’s nonconforming rear wheelchair lift drawing in Appellant’s bid despite specifications requiring a curbside lift beside front entrance fits the description of “not in accordance with IFB instructions and requirements” and thus allows a GSA determination of Appellant nonresponsiveness per IFB Page 33, ¶13(1d).
  - B. Whether explicit IFB language on Pages 41 and 43, not mentioning any rear entrance for anyone, and total silence during the Question and Answer and Amendment periods, shows clarity in the wheelchair specification.
  - C. Whether Appellant waived or forfeited its ability to raise that specifications are confusing in light of express IFB language that failure to examine all instructions is at bidder’s risk and that all requests for explanations must be in writing before bid opening.
  - D. Whether, in light of documented specification unresponsiveness and repeated disregard for Guam Procurement Appeal Procedures and direct instructions from the Public Auditor, Appellant can meet its burden at a formal hearing.
  - E. Whether Appellant’s bid fell short of the IFB Page 1 and 25 explicit descriptive literature requirements, authorized under 2 GAR, Div. 4, §3109(n)(3), which mandate the inclusion of design *details* and bid rejection if there is failure to conform.
  - F. Whether Appellant’s bid is ripe for rejection by the Chief Procurement Officer per IFB Page 25, ¶22 for having “any one or more items” not conforming with substantive specifications.
  - G. Whether Appellant’s attempt to effectuate a late post-opening bid amendment regarding wheelchair lift location was specifically solicited in light of GSA’s Christine Tedtaotao merely asking, on Agency Report, Volume 3, Page 302, 1-4-20, “are you able to point that out on one of the brochures that were submitted”.
  - H. Whether Appellant’s attempt to effectuate a late post-opening bid amendment regarding wheelchair lift location was contrary to law (2 GAR, Div. 4, §3109(k) and (n)(5)) and the terms of the IFB (Page 28, ¶8) in light of this being a Guam IFB which forbids negotiation and had no IFB mention of Pre-Production Meetings.

- I. Whether Appellant truly conforms with the Buy America Act when, per Page 77 of its bid, Page 113, Volume 1 of the Agency Report, Appellant's own Buy America Certification only certifies sixty-five percent (65%) American-made parts and the requirement is seventy percent (70%).
- J. Whether Appellant is a current valid El Dorado dealer when, per the terms of the El Dorado Dealer Agreement on Page 118, Volume 1 of the Agency Report, the agreement will be effective for one (1) year from the 8-21-17 agreement date.
- K. Whether Appellant's bid is currently valid when, by its own terms, it was only "good until November 30, 2019".

## II. OTHER UNAVAILING ARGUMENTS

- A. Whether Appellant's allegation that the lack of return phone calls and emails from the government violates the law is valid when no statute, regulation, or case law is cited in support.
- B. Whether allegations of bias are valid despite even-handed use of the minor informalities provision (IFB pg. 25, ¶22; 2 GAR, Div. 4, §3109(m)(4)(B)) to overlook Soderholm's improper completion of Bid Form 3 on Page 38 of its bid.
- C. Whether allegations of bias are valid despite GSA's Christine Tedtaotao trying (Agency Report, Vol. 3, pg. 317) to get the lowest bidder (Appellant) into the winning spot, but GRTA's Executive Manager, as is his right and duty, analyzed it (A.Report, Vol. 3, pg. 307) and had to reject it for nonconformity.
- D. Whether allegations of bias are valid despite there being no evidence of the Lt. Governor having any authority over procurement protests or appeals, or of him or GRTA Exec. Manager positively influencing this procurement to favor AutoSpot or to disfavor Soderholm, which all falls short of the "hard facts" bias requirements per precedent.
- E. Whether the meaning of Chief Procurement Officer, Claudia Acfalle's, statement of "agree", when Soderholm asserted it was the lowest responsive and responsible bidder, referred to the "lowest" aspect when such context can easily be garnered from the remainder of the same document which repeatedly established Soderholm's nonresponsiveness.
- F. Whether GRTA Executive Manager, Celestin Babauta's, 1-15-20 response was merely a concurrence that specifications were met since he has no way of monitoring

StarCraft's or El Dorado's assembly and his concurrence would have been the same had Soderholm prevailed.

- G. Whether FTA Pacific Representative, Ryan Fujii, in response to Soderholm's inquiry whether FTA will fund a bid that does not meet Buy America requirements, validated GRTA's and/or GSA's decision(s) when he stated that "FTA will not substitute its judgment for the Grantee's judgment in procurement decisions."

Respectfully submitted on this 14<sup>th</sup> day of September, 2020.

**OFFICE OF THE ATTORNEY GENERAL**  
**Leevin Taitano Camacho**, Attorney General

By:

---

**MATTHEW E. WOLFF**  
Assistant Attorney General