

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



TRANSMITTAL

To:	Mr. Irvin L. Slike General Manager Guam Solid Waste Authority 546 N. Marine Corps. Drive Tamuning, Guam, 96913 Phone: (671) 646-3111 Fax: (671) 649-3777 Email: Irvin.slike@gswa.guam.gov	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	10 (including cover page)
CC:	Mr. Joseph C. Razzano, Esq. Mr. Joshua D. Walsh, Esq. Attorney for Appellant Morrico Equipment, LLC Razano Walsh & Torres, P.C. 139 Murraby Blvd. Hagåtña, Guam 96910 Phone: (671) 989-3009 Email: jrazzano@rwtguam.com ; jdwalsh@rwtguam.com	Date:	April 23, 2024
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-24-001 Notice of Receipt of Appeal

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



OFFICE OF PUBLIC ACCOUNTABILITY

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

Phone: (671) 475-0390 / FAX: (671) 472-7951

April 23, 2024

Mr. Irvin L. Slike
General Manager
Guam Solid Waste Authority
546 N. Marine Corps. Drive
Tamuning, Guam, 96913

VIA EMAIL: irvin.slike@gswa.guam.gov

Re: Notice of Receipt of Appeal – OPA-PA-24-001

Dear Mr. Slike,

Please be advised that Morrico Equipment, LLC (hereinafter referred to as “Morrico”) filed an appeal with the Office of Public Accountability (OPA) on October 13, 2023, regarding the Guam Solid Waste Authority (GSWA)’s denial of its protest decision related to the procurement for Compact Wheel Loader with Attachments (GSWA-004-24). OPA has assigned this appeal case number OPA-PA-24-001.

Immediate action is required of GSWA 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 first six pages of 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 appeal. 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), the submission of 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 is required no later than **Tuesday, April 30, 2024**, five work days following this Notice of Receipt of Appeal. We also request 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 **Tuesday, May 7, 2024**, ten work days following receipt of this notice.

When filing all required documents with our office, please provide one original and one copy to OPA (**electronic filings will be acceptable and highly encouraged**), and serve a copy to Morrico.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 204 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Six Pages of the Notice of Appeal – OPA-PA-24-001

Cc: Joseph C. Razzano, Esq. and Joshua D. Walsh, Esq., Attorneys for Morrico



Jerrick Hernandez <jhernandez@guamopa.com>

Notice of Procurement Appeal - Morrico Equipment, LLC

Tabitha H. Madarang <tadarang@rwtguam.com>

Mon, Apr 22, 2024 at 4:42 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, Sosanbra Salas <ssalas@rwtguam.com>, "Joseph C. Razzano" <jrazzano@rwtguam.com>

Hafa Adai Mr. Hernandez,

Please see attached Notice of Procurement Appeal by Morrico Equipment, LLC for filing with the OPA.

Should you have any questions, please feel free to contact our office. Thank you.

Sincerely yours,

*Tabitha H. Madarang***RAZZANO WALSH & TORRES, P.C.**

139 Murray Blvd. Ste. 100

Hagatna, Guam 96910

Tel. 671-989-3009

**Morrico Notice of Procurement Appeal.pdf**

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Counsel for Appellant Morrico Equipment, LLC

PROCUREMENT APPEAL OF DENIAL OF PROCUREMENT PROTEST

THE OFFICE OF PUBLIC ACCOUNTABILITY

PART I.

In the Procurement Appeal of)	NOTICE OF PROCUREMENT
)	APPEAL
MORRICO EQUIPMENT, LLC,)	
)	
Appellant.)	Docket No. OPA-PA_____
_____)	

PART II: APPELLANT INFORMATION

Appellant's Name	Morrigo Equipment, LLC ("Morrigo")
Appellant's Mailing Address	197 Ypao Road, Tamuning, Guam, 96913
Appellant's Business Address	197 Ypao Road, Tamuning, Guam, 96913
Appellant Representative's Direct Email Address	joel.lesh@morrigoequipment.com
Appellant's Phone	671-649-1946

Appellant's Facsimile	671-649-1947
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Appellant is represented by legal counsel in this appeal. For purposes of this appeal, please direct correspondence to Morrico Equipment, LLC ("Morrico") lead counsel, Joseph C. Razzano of Razzano Walsh & Torres, P.C.

Counsel's Mailing Address	139 Murray Blvd. Ste. 100, Hagatna, Guam 9691
Counsel's Telephone	671-989-3009
Counsel's Facsimile	671-989-8750
Counsel's Direct Email Address	jrazzano@rwtguam.com

PART III: APPEAL INFORMATION

- A. Purchasing Agency: Guam Solid Waste Authority ("GSWA").
- B. Solicitation Number: Invitation for Bid No. GSWA-004-24: 24 Compact Wheel Loader with Attachments.
- C. The Decision being appealed was provided to the Appellant on April 5, 2024. The Decision was made by the agency General Manager, Irvin Silke.
- D. This Appeal is made from the Denial of Procurement Protest on Award provided to Morrico April 5, 2024.
- E. The name of the only competing offeror known to Appellant is: Far East Equipment Company, LLC ("Far East Equipment").

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PART IV: STATEMENT OF GROUNDS FOR APPEAL

A. THE GROUNDS FOR APPEAL

1. Relevant Procedural and Factual History

On November 3, 2023, the GSWA issued GSWA-004-24, a procurement solicitation seeking a Compact Wheel Loader with Attachments (the “IFB”). The IFB carried a single description of what GSWA was seeking: a “compact wheel loader with attachments.” **Exhibit A** ¶ p.32 (IFB Description). GSWA also advised offerors that it had formulated additional information on the wheel loader in reliance upon the specifications of a “John Deere model 244P,” but that “Such preference is intended to be descriptive, but not restrictive and for the sole purpose of indicating to prospective bidders a description of the article or services that will be satisfactory. Bids on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and how it differs from the original specification.” *See*, **Exhibit D** (GSWA Bid Answer, November 14, 2024); **Exhibit A** ¶ 18 (IFB General Terms and Conditions).

On December 5, 2023, Morrico submitted its bid for a compact wheel loader with attachments, with a price \$47,000 less expensive than the John Deere 244 P offered by Far East Equipment. *See*, Compare **Exhibit A** with **Exhibit F** (Far East Bid Submission). On December 13, 2023, Morrico received word that that agency had rejected its bid due to “non-conformance with the specifications.” **Exhibit B** (Bid Status form). Since it became apparent that the agency had improperly restricted the bid to a

de facto sole source procurement by wherein only the specification of the “John Deere model 244P” could comply, Morrigo filed a procurement protest with the GSWA on December 27, 2023. *See, Exhibit C.* GSWA denied the protest on April 5, 2024, and this appeal followed. *See Exhibit E.*

2. Timeliness of Protest and Appeal.

GCA 5 §5425(a) requires that Protests must be made within 14 days of the issues leading to the protest being known by the Protester (Morrigo in this case). The issues documented in this protest appeal became known to Morrigo on December 13, 2023, it became clear to Morrigo that the agency had not simply used the “John Deere model 244P” as a descriptive brand identifier, but instead as a restrictive requirement limiting competition and directing an award to a single supplier. Morrigo raised its protest to GSWA on December 27, 2023. This Appeal comes within fifteen days after GSWA issued its protest decision to Morrigo, and is within the fifteen day protest appeal period set by 5 GCA § 5425(e). Therefore, both Morrigo’s agency level protest and subsequent appeal to the OPA meet the timeliness standards required by applicable law and regulation.

3. Basis for Protest and Appeal: GSWA’s use of the specifications for the John Deere model 244P have created an impermissible procurement restriction.

5 GCA § 5265 provides that: “All 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.” In addition, 5 GCA § 5268(a) provides that: “Specifications 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 Territory's minimum needs." An agency should avoid specifications peculiar to one manufacturer and, instead, should develop specifications that "describe the salient technical requirements or desired performance characteristics of supplies or services to be procured without including restrictions which do not significantly affect the technical requirements or performance characteristics." 5 GCA § 5268(b) and (c). More, when an agency like GSWA opts to utilize a brand name specification, its use is limited to instances where the purchasing officer formally determines in writing that only the specified brand can adequately fulfill the needs of the territory. The government is also obligated to actively pursue multiple competitive sources for brand name items. Failing to do so necessitates resorting to the sole source method for source selection, as stipulated in § 4103(b)(2)(c)(ii).

Morrice's bid on the solicitation offered the government a wheel loader in the same class and with the same performance capabilities as the John Deere model 244P, though with several *de minimis* deviations from the John Deere. These deviations from the brand specific specifications were explained to the agency as allowed under ¶18 of the general terms and conditions of the bid. When GSWA rejected its bid on the basis that Morrice did not match the exact John Deere specifications, it became apparent that GSWA had mounted a *de facto* sole source procurement, but without adhering to the formalities required of such a procurement. This violated the law, and mandates that

the procurement be corrected so as to bring about maximum competition to protect the taxpayers and ratepayers of Guam.

B. RULING REQUESTED

Morrigo respectfully requests that the Office of Public Accountability issue an Order declaring the following:

- (1) That GSWA's application of the John Deere 244P specifications in a restrictive manner violates the Guam Procurement Code and Regulations governing brand name specifications, and was arbitrary, capricious and an abuse of discretion;
- (2) That GSWA's restrictive application of the John Deere 244P specifications without appropriate written findings was arbitrary, capricious and an abuse of discretion;
- (3) That GSWA's denial of Morrigo's protests was unreasonable, arbitrary, capricious and an abuse of discretion;
- (4) That the automatic stay of procurement arising under 5 G.C.A. §5425(g) be confirmed in place; and
- (5) For such further relief that the OPA deems appropriate.

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Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-24-001 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Tue, Apr 23, 2024 at 3:11 PM

To: irvin.slike@gswa.guam.gov, "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Joseph C. Razzano" <jrazzano@rwtguam.com>

Hafa Adai,

Please see the attached Notice of Receipt of Appeal for OPA-PA-24-001. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Best Regards,



Jerrick J.J.G. Hernandez, MA, CGFM, CFE, CICA, CGAP
Accountability Auditor

Office of Public Accountability
+1 671 475 0390 (ext. 204)
jhernandez@guamopa.com
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