



Jerrick Hernandez <jhernandez@guamopa.com>

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

Camarine Hopkins <camarine@camachotaitano.law>
To: Jerrick Hernandez <jhernandez@guamopa.com>

Mon, Jun 17, 2024 at 2:27 PM

Hafa Adai Jerrick,

Camacho & Taitano LLP through Shannon Taitano, Esq., hereby submits this email filing regarding the above subject procurement appeal. This email consists of one (1) document, as follows:

- Motion to Dismiss or in the Alternative to Lift Stay (**5 pages**)

Please let me know if you have any questions. Have a great afternoon.

Thank you,
Camarine

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6 Attorneys for Purchasing Agency *Guam Solid Waste Authority*

7 **IN THE SUPERIOR COURT OF GUAM**

8 **IN THE MATTER OF THE APPEAL OF**)

) Docket No. OPA-PA-24-001

9)
10 **MORRICO EQUIPMENT, LLC,**)

11 Appellant,)

**MOTION TO DISMISS OR IN THE
ALTERNATIVE TO LIFT STAY**

12 vs.)

13 **GUAM SOLID WASTE AUTHORITY,**)

14 Purchasing Agency.)
15)

16 **INTRODUCTION**

17
18 Morrico knew about the specifications it now complains about when Guam Solid
19 Waste Authority (“GSWA”) published the Invitation for Bid (“IFB”) in November
20 2023. Morrico had actual knowledge that a John Deere model was used for some
21 specifications and the requirements for clearance no later than November 15, 2023.
22 Instead of protesting the specifications within fourteen days, Morrico elected to submit
23 a bid that failed to meet several specifications. Does the Office of the Public Auditor
24
25
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1 (“OPA”) have jurisdiction over appeals filed after the statutory deadline because a
2 bidder strategically decides to wait and see if it wins a bid?

3 **FACTUAL BACKGROUND**

4 Specifications for the Compact Wheel Loader with Attachments were made
5 known when the IFB was published on November 3, 2023. Morrico was the first of
6 potential bidders to pick up the IFB on the same day it was published. See Procurement
7 Record, p. 42.

8
9 Questions from prospective bidders on the specifications were answered and
10 distributed in the second and third week of November. GSWA informed Morrico that
11 GSWA used the John Deere model 244P product to form the specifications of the IFB
12 on November 15, 2022. See Procurement Record, p. 90. GSWA also responded to
13 Morrico’s request for clarification regarding the single-wheel maximum and minimum
14 rise and fall specification on November 20, 2023. See Procurement Record, p. 99.

15
16 Morrico submitted its bid on December 5, 2023, specifically asking for a
17 “deviation” for the specifications it now challenges based on its non-compliance.
18 Morrico submitted its protest on December 27, 2023. GSWA denied that protest on
19 several grounds, including a lack of timeliness. This appeal followed.

20 **ARGUMENT**

- 21
22 1. Morrico’s protest was untimely.

23 Guam law clearly states that an actual or prospective bidder who may be
24 aggrieved in connection with the source selection method or solicitation must submit a
25 written protest within fourteen (14) days after the protester knows or should have
26

1 known the facts giving rise to its protest. 5 GCA § 5425. The Supreme Court of Guam
2 has held that section 5425 “speaks not in terms of *what* is being protested but in terms
3 of knowledge of the facts giving rise to a protest.” *DFS Guam L.P. v. The A.B. Won Pat*
4 *International Airport Authority*, 2020 Guam 20 ¶ 87 (emphasis in original).
5 “Therefore, a protest filed more than 14 days after the disappointed offeror or bidder
6 had notice of the grounds for the protest is barred as untimely.” *Id.*

8 Morrigo failed to submit its protest within the statutory deadline. Morrigo knew
9 no later than November 15, 2023, that some IFB specifications were based on a John
10 Deere model and no later than November 20, 2023, about the requirements for
11 clearance. Morrigo did not file its protest until December 27, 2023, several weeks after
12 the statutory deadline. See Procurement Record, pp. 355-359, 463-466.

14 Morrigo claims it became apparent that the IFB was restrictive when its bid was
15 rejected. However, this is not the standard for determining timeliness of a protest. *See*
16 *DFS Guam L.P.*, 2020 Guam 20 ¶ 85 (rejecting the argument that a party becomes
17 “aggrieved” for purposes of a procurement protest “only when it loses the potential
18 business, that is, when a bidder learns that it was not awarded a contract.”). The OPA
19 has dismissed appeals for lack of jurisdiction based on the guidance from *DFS Guam*
20 *L.P.* in matters where a disappointed bidder filed its protest more than 14 days after it
21 had notice of the grounds for the protest. *Pacific Data Sys. v. GHURA*, OPA-PA-21-
22 001, Dec. & Order re Mot. to Dismiss for Lack of Juris. at 3-4 (July 16, 2021). Based
23 on *DFS Guam L.P.* and section 5245, Morrigo’s protest was untimely, and this appeal
24 should be dismissed.
25
26

1 2. There is no legal basis to impose a stay.

2 After GSWA denied Morrico’s untimely protest, GSWA lifted the stay and
3 awarded the IFB contract to FarEast Equipment on April 12, 2024. See Procurement
4 Record, pp. 388-461. Guam’s Procurement Law and Regulations only impose an
5 automatic stay when a protest has been filed on time. 5 GCA § 5429(g) and 2 GARR §
6 9101(e). Since the protest was untimely, the automatic stay was no longer in effect.
7

8 After Morrico appealed GSWA’s decision, GSWA voluntarily decided to stay
9 the procurement. However, there is no legal requirement to reimpose the stay, so the
10 stay should not be applied to this appeal.

11 In *DFS Guam L.P.*, the Guam International Airport Authority awarded the
12 contract to Lotte Duty Free Guam LLC after denying DFS’s protest, but before DFS
13 appealed the decision. The court noted that was a risk GIAA decided. *Id.* at 149. The
14 critical need for a compact wheel compelled GSWA to lift the stay and award the
15 contract. To date, GSWA has incurred a little over \$16,000.00 in rental costs for
16 forklifts since the skid loader went down, and anticipate spending close to \$60,000 by
17 the time the wheel loader is delivered to GSWA. Since this is a post-award appeal,
18 there is no legal requirement to impose the stay, and therefore, it should not be applied
19 to this procurement appeal.
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1 **CONCLUSION**

2 GSWA respectfully requests that the matter be dismissed for filing an untimely
3 protest. Alternatively, the stay should be lifted immediately.

4 Respectfully submitted this 17th day of June 2024.

6 **CAMACHO & TAITANO LLP**
7 Attorneys for Purchasing Agency

8 By: 
9 **SHANNON TAITANO**