



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>

Wed, Jul 3, 2024 at 3:18 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:

- Reply (**4 pages**)

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

Thank you,
Camarine

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Co-Counsel for Purchasing Agency *Guam Solid Waste Authority*

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

IN THE APPEAL OF:)	Docket No.: OPA-PA-24-001
MORRICO EQUIPMENT, LLC,)	
Appellant,)	REPLY
vs.)	
GUAM SOLID WASTE AUTHORITY,)	
Purchasing Agency.)	

INTRODUCTION

Morrigo essentially argues that the time to protest specifications does not begin to run until a bid is rejected. Morrigo goes further to argue that this is true even in cases such as this matter where the record shows a vendor was given guidance specific to the specifications several weeks before submitting its bid. Morrigo's arguments are contrary to Guam law and it has failed to establish it protested within the statutorily required period. Therefore, this appeal should be dismissed for lack of jurisdiction.

1 **ARGUMENT**

2 I. Morrico has failed to establish that it filed its protest within fourteen days
3 of when it had knowledge of the facts giving rise to this protest.

4 First, Morrico does not appear to dispute any of the factual grounds that GSWA
5 raised in its motion to dismiss regarding GSWA publishing the invitation for bid or
6 providing notice to Morrico regarding its use of the challenged specifications no later
7 than November 20, 2023. Instead, Morrico argues did not know that it was not
8 required to file a protest until GSWA disqualified it for submitting a bid that failed to
9 comply with the specifications.
10

11 Morrico’s position is contrary to Guam law. As Morrico concedes, the Supreme
12 Court of Guam has settled this: the fourteen (14) day period to file a protest begins to
13 run when a bidder has knowledge of the facts giving rise to the protest, not when a
14 bidder learns that it was not awarded the contract. *DFS Guam L.P. v. The A.B. Won Pat*
15 *International Airport Auth.*, 2020 Guam 20 ¶ ¶ 85, 87. Morrico has not identified any
16 *facts* that it was not aware of prior to GSWA rejecting its bid or that it learned after
17 GSWA rejected its bid. GSWA’s rejection of Morrico’s bid did not change any of the
18 specifications that Morrico now challenges.
19

20 Regardless of how Morrico characterizes its protest, its claim arises from the
21 specifications. Morrico does not dispute that it knew GSWA had used a John Deere
22 product as the basis for some of its specifications on November 15, 2023 or that it had
23 knowledge of the other specifications on November 20, 2023. In fact, Morrico itself
24 specifically identified the specifications it could not meet when it submitted its bid.
25

1 Morrigo should have protested its claim that the specifications were unduly
2 restrictive no later than fourteen (14) days after Guam Solid Waste Authority
3 specifically informed all prospective bidders, including Morrigo, about GSWA's use of
4 John Deere as the basis of some of the specifications and other specifications Morrigo
5 now challenges during the question and answer period.¹ It did not. Therefore, the
6 Public Auditor does not have jurisdiction of this appeal and it should be dismissed.
7

8 II. The authority of the Public Auditor to hear a matter when a protest is
9 filed after the statutory deadline is different from a party moving for
10 summary judgment.

11 GSWA submits that Morrigo failed to file its protest within fourteen days of
12 when Morrigo knew about the specifications challenged in this appeal. GSWA has
13 relied on what appears to be undisputed facts regarding the timing of this appeal.
14 GSWA has also cited specific portions of the Procurement Record in support of its
15 motion to dismiss. If Morrigo failed to file its protest within the statutorily required
16 period, the Public Auditor has no authority to hear this matter and the matter must be
17 dismissed. That question and analysis is quite distinct from whether GSWA is entitled
18 to judgment as a matter of law.

19 //

20 //

21 //

24 ¹ Morrigo's time to protest the specifications could have started to run once the IFB was published. However, the Public Auditor
25 does not need to reach that issue since GSWA specifically informed Morrigo about the specifications Morrigo now challenges on
November 15, 2023 and November 20, 2023.

1 **CONCLUSION**

2 In light of the foregoing, GSWA respectfully requests that this procurement
3 appeal be dismissed due to a lack of jurisdiction.

4 Dated: July 3, 2024.

5 **CAMACHO & TAITANO LLP**
6 Co-Counsel for Purchasing Agency

7
8 By: 
9 **SHANNON TAITANO**