

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



TRANSMITTAL

To:	Mr. Rory J. Respicio General Manager Port Authority of Guam Jose D. Leon Guerrero Commercial Port 1026 Cabras Highway, Suite 201 Piti, Guam, 96915 Phone: (671) 477-5931/35 Fax: (671) 477-2689/4445 Email: rjrespicio@portofguam.com	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 Razzano Walsh & Torres, P.C. 139 Murrery Blvd. Hagåtña, Guam 96910 Phone: (671) 989-3009 Email: jrazzano@rwtguam.com ; jdwalsh@rwtguam.com	Date:	August 15, 2024
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-24-002 Notice of Receipt of Appeal

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

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OFFICE OF PUBLIC ACCOUNTABILITY

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

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

August 15, 2024

Mr. Rory J. Respicio
General Manager
Port Authority of Guam
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201
Piti, Guam, 96915

VIA EMAIL: rjrespicio@portofguam.com

Re: Notice of Receipt of Appeal – OPA-PA-24-002

Dear Mr. Respicio,

Please be advised that Morrico Equipment, LLC (hereinafter referred to as “Morrico”) filed an appeal with the Office of Public Accountability (OPA) on August 14, 2024, regarding the Port Authority of Guam (PAG)’s denial of its protest decision related to the procurement for 108’ Telescopic Boom Lift (Invitation for Bid No. IFB-PAG-013-24). OPA has assigned this appeal case number OPA-PA-24-002.

Immediate action is required of PAG 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 seven 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 **Thursday, August 22, 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 **Thursday, August 29, 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 can be emailed to jhernandez@guamopa.com**), and serve a copy to Morrico.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at jhernandez@guamopa.com or 475-0390 ext. 204 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 Seven Pages of the Notice of Appeal – OPA-PA-24-002

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

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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, Hagåtña, 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: Port Authority of Guam ("PAG" or the "Port").
- B. Solicitation Number: Port Authority of Guam IFB# IFB-PAG-013-24.
- C. The Decision being appealed was provided to the Appellant on July 31, 2024. The Decision was made by the agency General Manager, Rory J. Respicio.
- D. This Appeal is made from the Decision on Protest to Morrico via email on July 31, 2024.
- E. The name of the only competing offeror known to Appellant is: Federal Contracts Corporation ("FCC").

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PART IV: STATEMENT OF GROUNDS FOR APPEAL

A. THE GROUNDS FOR APPEAL

1. Relevant Procedural and Factual History

On January 26, 2024, the PAG issued IFB-PAG-004-24, seeking a 180' Telescopic Boom Lift. Morrigo was the lowest priced responsive bidder for that tender, but when Morrigo refused to unilaterally drop its quoted price, PAG cancelled the IFB. The Port then issued IFB-PAG-013-24 on April 23, 2024, seeking the exact same item. IFB p. 3, attached to this Notice of Appeal as **Exhibit A**.

On May 7, 2024, Morrigo submitted its bid. On May 20, 2024, the Port informed Morrigo that, despite being the only fully responsive bidder to the IFB, the Port instead intended to enter into a contract with Federal Contracts Corp ("FCC"). Notice of Award, Attached to this Notice of Appeal as **Exhibit B**. The Bid Abstract assembled by the Port's procurement team confirms that FCC failed to provide the bid security necessary for a responsive bid, and also failed to have the necessary business and other licenses needed to make sales to the Port. The Port's notice on May 20, 2024, of the FCC meant that the Port not only selected a non-responsive offeror to perform the work of the IFB, but also selected a party that could not responsibly perform under the laws of Guam the way that Morrigo can. Morrigo submitted its Bid Protest to the PAG on June 3, 2024. Bid Protest 1, attached to this Notice of Appeal as **Exhibit C**.

Morrigo personnel were subsequently able to review procurement documents made available by PAG staff, and that review showed that not only did FCC both fail to

provide the bid security necessary for a responsive bid and fail to have the licenses necessary to do the work, but their bid submission was also non-responsive and did not comport with the IFB's plain requirements for multiple other reasons:

1. FCC failed to execute and provide the required Special Reminder to Prospective Bidders;
2. FCC failed execute and provide the Bid Bond form;
3. FCC was explicitly non-responsive in refusing to provide training as described and required on page 32 of the IFB;
4. FCC refused to offer and provide the warranty required by the IFB;
5. FCC refused to offer and provide technical assistance as sought on page 33 of the IFB;
6. FCC refused to offer and provide service as required on page 33 of the IFB;
7. FCC does not have a local authorized dealer as required on page 33 of the IFB; and
8. FCC refused to provide complete familiarization training as required on page 33 of the IFB.

These additional non-conforming issues compelled Morrico to submit a second Bid Protest on these issues on June 20, 2024. Bid Protest 2, attached to this Notice of Appeal as **Exhibit D**. PAG Denied the Bid Protests on July 31, 2024. Decision on protest, attached as **Exhibit E**.

2. Timeliness of Protest and Appeal.

The Port's May 20, 2024, decision to select a non-responsive offeror constituted a mistake. 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). Morrigo learned more about the Port's error in selecting a non-responsive offeror on the same day it received the award notice — May 20, 2024. Morrigo raised its protest to PAG on June 3, 2024, and raised newly discovered issues on June 20, 2024.

This Appeal comes within fifteen days after PAG issued its protest decision to Morrigo on July 31, 2024, 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: PAG has selected a non-responsive and non-responsible offeror.

The Port's selection on May 20, 2024, of the FCC bid meant that the Port not only selected a non-responsive offeror to perform the work of the IFB, but also selected a party that could not responsibly perform under the laws of Guam the way that Morrigo can. The Port's apparent decision to select an offeror who provided no bid security also meant that FCC was provided with a *de facto* unfair pricing advantage that other offerors could not avail themselves of. PAG's decision to ignore other areas of FCC non-responsiveness constitutes a fundamental and material change the specifications that only benefitted FCC, as no other bidder was allowed to deviate from complying with the IFB.

B. RULING REQUESTED

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

- (1) That PAG's decision to make an award to FCC despite FCC's failure to adhere to the requirements of the IFB was arbitrary, capricious and an abuse of discretion;
- (2) That PAG's denial of Morrigo's protests was unreasonable, arbitrary, capricious and an abuse of discretion;
- (3) That the automatic stay of procurement arising under 5 G.C.A. §5425(g) be confirmed in place;
- (4) That Morrigo, as the lowest priced responsive and responsible bidder under the IFB, be named for award of the IFB; and
- (5) For such further relief that the OPA deems appropriate.

C. SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS

Submitted with this appeal are the following supporting exhibits, evidence, and documents:

- 1. Invitation for Bid, April 23, 2024**
- 2. Notice of Award, May 20, 2024**
- 3. Bid Protest, June 3, 2024**

4. Bid Protest 2, June 20, 2024

5. Decision, July 31, 2024

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Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-24-002 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Thu, Aug 15, 2024 at 10:24 AM

To: "Rory J. Respicio" <rjrespicio@portofguam.com>

Cc: "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-24-002. 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

<https://www.opaguam.org/>



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