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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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Attorneys for Appellant
Morrigo Equipment, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of)
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MORRICO EQUIPMENT, LLC,)
)
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Appellant.)
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**MORRICO EQUIPMENT, LLC,
COMMENTS ON AGENCY
REPORT**

Docket No. OPA-PA-13-001

Appellant, Morrigo Equipment, LLC (“Morrigo”), hereby submits its comments on the Agency Report which the General Services Agency (“GSA”), filed with the Office of Public Accountability (“OPA”), on February 14, 2013.

This appeal involves a procurement conducted by the GSA on behalf of the Guam Fire Department (“GFD”). On November 16, 2012, the GSA published an invitation for a procurement described as “Multi-Step Bid No.: GSA-005-13; New and Current Year, Custom Cab-Forward Pumpers, New and Current Year, Urban/Wildland Interface Pumpers, and 5-Year Extended Service/Maintenance Agreements.”

The multi-step procurement was to be conducted in two phases. The first phase consisted of an evaluation of the bidder’s technical proposals and the second phase consisted of an evaluation of the price of any “acceptable” or “potentially acceptable” proposal. *See, generally*, 2 GAR § 3109(r) to (v). Morrigo properly submitted its technical proposal and its price proposal in separate

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envelopes as required by the solicitation. Technical proposals were also received by the GSA from Mid-Pac Far East and Far East Equipment Company.

On January 23, 2013, the GSA advised Morrigo that its “bid proposal has been rejected due to non-conformance with the delivery requirement as stated in this Multi-Step Bid which specifically indicates: 240 days upon receipt of purchase order.” *See*, Procurement Record, Vol. 3, Tab 8. The GSA also rejected the proposal from Mid-Pac based on a failure to comply with the 240 day delivery request. *Id.* The Mid-Pac proposal should not have been considered at all since it did not submit a complete proposal until December 17, 2012, three days after the deadline for the submission of proposals. *See*, Exhibit A hereto; Procurement Record, Vol. 5, Tab 17 (Other Correspondence). Although Exhibit A references an attached letter from Mid-Pac Far East, no such letter can be found in the procurement record; which record is obviously incomplete and no official from the GSA has certified otherwise as required by 5 GCA § 5250.

On January 23, 2013, Morrigo filed its formal protest of the GSA’s determination to reject the Morrigo bid proposal. *See*, Procurement Record, Vol. 1, Tab 1. The substance of the Morrigo protest was that the multi-step bid first required the GSA to score a bidder’s proposal on the five separate criteria which were delineated in the solicitation. *See*, Procurement Record, Vol. 2, Tab 4 (Original Bid Solicitation), p. 116. Each of the five criteria, which included sub-criteria, was worth up to 20 points, for a total of 100 possible points. Delivery was worth only 10 points out of 20 under the fourth criteria “Manufacturing and Delivery Schedule”, which itself had three sub-criteria (the other two being worth 5 points). Any score above 60 is considered potentially acceptable and would allow the bidder to be considered in the second step of the multi-step bid process which concerned pricing. *See*, 2 GAR § 3109(t)(4) and (5).

On January 30, 2013, the GSA wrote to Morrico outlining and responding to each of the points in Morrico's protest and formally denying that protest. *See*, Procurement Record, Vol. 1, Tab 2. The GSA rejected the Morrico technical proposal based on what it considered a non-conforming delivery time and, therefore, did not even score the Morrico technical proposal on the five criteria listed on page 116 of the multi-step bid solicitation.

In its Agency Report, the GSA states that, "The three bids were reviewed by GSA to determine whether each met minimum requirements of the bid specifications on December 14, 2012. This review included a review of each bid to determine whether the bidder was able to deliver the fire apparatus within the delivery time specified in the Multi-Step Bid." *See*, February 14, 2013 Agency Report, p. 2. Nowhere in the GSA's solicitation is it stated that, before proceeding to phase one of the multi-step invitation (technical offer analysis) the proposals would be reviewed for "minimum requirements". ***Further, the solicitation nowhere explains what those "minimum requirements" were.*** And, although stated in plural form, it is still not known what other "minimum requirements" the GSA was utilizing to reject proposals before even proceeding to score them under the first phase governing technical analysis. This was quite aptly pointed out by the GFD's own Kevin Reilly who questioned what other minimum requirements were applicable to the solicitation. *See*, Exhibit B; Procurement Record, Vol. 5, Tab 17 (Other Correspondence). However, Assistant Attorney General John Weisenberger shot him down stating that a delivery time over 240 days was subject to immediate rejection and without offering any explanation as to the other "minimum requirements" that Mr. Reilly inquired about. *Id.*

A technical proposal can only be reviewed based on the criteria outlined in the solicitation. Here, the GSA put together a score sheet covering five criteria with each of those five criteria being worth up to 20 points and together adding up to a possible 100 points. Again, there was no

reference on the scoring sheet that delivery time was cause for immediate rejection and that any offer submitted with a delivery time in excess of 240 days would be automatically rejected. And, the GSA knew how to include language in the solicitation providing for the automatic rejection of a bid proposal.

Included in the multi-step bid was a section called “Special Reminder to Prospective Bidders”, which provided that, ***NOTE: IF BID COST IS INCLUDED WITH THE TECHNICAL PROPOSAL IT WOULD BE DEEMED AUTOMATIC DISQUALIFICATION OR REJECTION.**” *See*, Procurement Record, Vol. 2, Tab 4 (Original Bid Solicitation), p. 1 (emphasis in original). The GSA further provided in the “Special Reminder” that, **“This reminder must be signed and returned in the bid envelope together with the technical bid. Failure to comply with the above requirements may be cause for disqualification and rejection of the bid.”** *Id.* (emphasis in original). The solicitation also provided that, “Bid submitted after the time and date specified above shall be rejected.” *See*, Procurement Record, Vol. 2, Tab 4 (Original Bid Solicitation), p. 3. As noted above, Mid-Pac submitted its bid three days late but was not rejected on that basis even though under the solicitation rejection was mandatory.

Under the heading “Specification Bid Requirements”, the GSA provided that “Bid proposals shall be submitted in the same sequence as specifications for ease of evaluation, comparison and checking of compliance. ***Failure to comply with this paragraph will result in the bid being rejected.***” *See*, Procurement Record, Vol. 2, Tab 4 (Original Bid Solicitation), p. 30 (emphasis added). Immediately following this is a heading entitled “Exceptions” which similarly provides that **“In instances that the specification states ‘(no exception)’, failure to comply will result in the bid being rejected.”** *Id.* (emphasis in original). On the same page under “Adherence to Specifications”, the GSA expressly provided, **“NOTICE TO CONTRACTORS: ANY**

SUBMISSION INDICATING THAT THE MANUFACTURER'S SPECIFICATIONS SHALL SUPERSEDE THE PURCHASER'S SPECIFICATIONS WILL IMMEDIATELY BE REJECTED." *Id.* (emphasis in original). And, right below that under "Submission Review and Equivalents", the GSA provided that "The contractor must explain in detail, along with full supporting documentation, such as but not limited to photographs, product brochures and test data, how the proposed item(s) meets or exceeds the specifications. **FAILURE TO COMPLY WITH THIS REQUIREMENT WILL AUTOMATICALLY DISQUALIFY THE CONTRACTOR.**" *Id.* (emphasis in original).

Under the heading "Warranties", the GSA provided that "Any warranty that does not meet these minimums shall be grounds for immediate rejection of the bid/quote submission." *See*, Procurement Record, Vol. 2, Tab 4 (Original Bid Solicitation), p. 33. The GSA also required a "Multiplex Components Warranty" and expressly provided that "**FAILURE TO COMPLY WITH THIS REQUIREMENT WILL AUTOMATICALLY DISQUALIFY THE BID.**" *See*, *Id.*, p. 35 (Emphasis in original). Far East Equipment deviated from this, but was not subject to automatic rejection despite express provision in the specification that failure to comply would result in rejection. *See*, Exhibit C hereto; Procurement Record, Vol. 4, Tab 11(b)(Bids Submitted by Other Bidders)(Far East Equipment Co., LLC).

All of the foregoing was set out in the GSA's specifications with respect to the "Current Year Custom Cab-Forward Fire Pumper Apparatus". Similar automatic rejection language was used for the comparable specifications for the "Urban/Wildland Interface Pumpers". *See*, Procurement Record, Vol. 2, Tab 4 (Original Bid Solicitation), pp. 87-113. In any event, if the GSA desired to make the submission of a delivery time frame in excess of 240 days, an automatically

disqualifying event, it could have and knew how to do precisely that. But it did not do that in this procurement solicitation.

Further, the multi-step bid process is to be utilized to foster competition. The GSA obliterated this idea by rejecting out of hand two of the three technical proposals submitted, leaving only one potential contractor, whose bid will apparently be accepted without regard to price. Guam's Procurement Regulations expressly provide that:

The Procurement Officer may initiate Phase Two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds that such is not the case, the Procurement Officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Subsection 3109(t)(5) of this Section.

See, 2 GAR Section 3109(t)(4)(emphasis added). Here, there can obviously be no "effective price competition" when the government arbitrarily knocks out all other competitors on subjective criteria, leaving only one proposal on the table for price consideration.

A proposal in response to a government procurement solicitation cannot be analyzed under criteria not set forth in the invitation. In *Isratex, Inc., v. United States*, 25 Cl.Ct. 223 (1992), the court explained that a solicitation must advise potential offerors of factors that would render a proposal subject to automatic rejection. The factual background of the issue there was described as follows:

In this case the contracting officer considered the hydrostatic resistance test as a "very important" subfactor, so important, in fact, that failure of the test caused offerors' proposals to be rejected. Deficiencies relating to workmanship or dimensional requirements of the PDM did not result in rejection of other offerors' proposals; indeed, DPSC directed those offerors to submit new corrected PDMs. Thus, the hydrostatic resistance test was accorded far greater

weight than the other subfactors in evaluation of an offeror's PDM and proposal.

See, Isratex, Inc., v. United States, 25 Cl.Ct. 223, 229. The court held that "If DPSC intended that passing the hydrostatic resistance test was a mandatory requirement, DPSC should have stated so in language typically used for such purposes." *Id.* It concluded that "The offeror would have to have been clairvoyant to anticipate that failing the hydrostatic resistance test alone would automatically disqualify its proposal, while exhibiting other deficiencies would allow the offerer to be given a second chance at contract award." *Id.*, at 230.

Similarly, the OPA has held with respect to a multi-step procurement that "GPA may only apply objectively measurable criteria, which are set forth in the Invitation for Bids, in determining the lowest bidder. 2 GAR Section 3109(n)(4). The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids. 5 G.C.A. Section 5211(e)." *See, In the Appeal of O&M Energy, S.A., Appeal No: OPA-PA-08-004*, p. 5 (September 30, 2008 Decision). Here, the invitation did not provide for automatic rejection of a proposal due to non-conformance with any delivery related specification set out in the invitation. To the contrary, the solicitation expressly provided that the technical proposals would be scored on three different delivery related specifications.

The propensity of the GSA to depart from written criteria is also illustrated by Assistant Attorney General John Weisenberger who opined that, "I agree with Paul that one of the things the evaluators may have considered although it doesn't say this on the instrument is, obviously, if someone says I'll get it to you in 180 days, you might want to give them extra points because they're ... and so that might make up with some other technical problem they have somewhere else." *See, Exhibit D hereto; Procurement Record, Vol. 5, Tab 17 (Other Correspondence)*(ellipsis

in original). Well, if more points can be garnered through delivery in less than 240 days, in fairness, a delivery in excess of 240 days should only be subject to a deduction in points; not wholesale rejection. Instead, accelerated delivery in less than 240 days is rewarded with more points while a proposed delivery in excess of 240 days is punished with outright rejection.

But, as noted by Mr. Weisenberger, the solicitation does not contain an accelerated delivery criteria. By comparison, in *Isratex, Inc., v. United States*, 25 Cl.Ct. 223, 225 (1992), the solicitation there at issue included an express criteria for “Accelerated Delivery”. If the GSA intended to reward a proposed delivery time under 240 days, it should have so stated in the invitation.

The GSA’s short-sighted approach to the delivery time issue in this case is similar to that involved in another multi-step bid procurement in which the Guam Power Authority (“GPA”) rejected a proposal that was some \$6,000,000.00 cheaper than the proposal of the only other competitor. GPA based the rejection on four price-related “exceptions” which it held to be disqualifying and non-responsive. However, the GPA did not conduct a determination on whether these non-responsive “exceptions” could be waived in order to save the territory and its taxpayers the approximate \$6,000,000.00 extra that GPA would have to pay the competitor. *See, In the Appeal of O&M Energy, S.A., Appeal No: OPA-PA-08-004, p. 5 (September 30, 2008 Decision)*(“O&M’s price exceptions would have to be worth more than \$6 million to make its price more expensive than TEMES.”).

Here, the GSA seems to have determined that it wants a vehicle in 240 days, and not a day later, and regardless of price or other characteristics. A manufacturer could offer the absolute best vehicle in the world at the best price, but under GSA analysis, if it cannot be delivered to Guam in 240 days, it will be automatically and without further thought rejected, even if delivery takes only 30 days longer. This is a short-sighted analysis and, given that the specifications did not advise

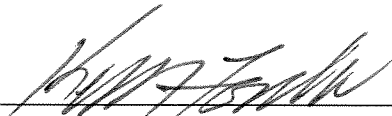
offerors that delivery in excess of 240 would be subject to automatic rejection, a gross abuse of discretion.

Based on the foregoing, Morrigo respectfully requests that the OPA determine that the GSA's automatic rejection decision be declared arbitrary, capricious and unlawful and that the GSA's denial of the Morrigo protest be overturned.

Dated this 28th day of February, 2013.

DOOLEY ROBERTS & FOWLER LLP

By:



KEVIN J. FOWLER
Attorneys for Appellant
Morrigo Equipment, LLC



Robert Kono < robert.kono@gsa.guam.gov >

GSA-005-13 Pumper & Wildland Fire Trucks

1 message

Mark Cruz < mcruz@midpacfareast.com >

Mon, Dec 17, 2012 at 2:35 PM

To: Claudia Acfalle <claudia.acfalle@gsa.guam.gov>

Cc: Anita Cruz <anita.cruz@gsa.guam.gov>, Robert Kono <robert.kono@gsa.guam.gov>

Hafa Adai Ms. Acfalle,

Please see attached letter.

Please reply or call me if you have any questions.

Best Regards,

Mark S. Cruz

Sales Manager

Mid Pac Far East, LLC

Office: (671) 632-5160

Mobile: (671) 486-2789

Fax: (671) 632-5167

4 attachments

12.17.12 GSA-005-13 Service Ability Letter.pdf
69K

GSA-005-13 Pumper Truck Service Spec.pdf
87K

GSA-005-13 Wildland Truck Service Spec.pdf
88K

12.13.12 GSA-005-13 Letter of Qualification.pdf
74K



Paul Llanes < paul.llanes@gsa.guam.gov >

Fwd: Evaluation criteria

5 messages

Kevin Reilly < kevin.reilly@gfd.guam.gov >
To: paul.llanes@gsa.guam.gov

Fri, Jan 18, 2013 at 11:28 AM

----- Forwarded message -----

From: **John Weisenberger** <jweisenberger@guamag.org>
Date: Thu, Jan 17, 2013 at 3:25 PM
Subject: RE: Evaluation criteria
To: Kevin Reilly <kevin.reilly@gfd.guam.gov>, Robert Kono <robert.kono@gsa.guam.gov>
Cc: Edward Artero <edward.artero@gfd.guam.gov>, Tanya Bejado <tanya.bejado@gfd.guam.gov>, Lillian Tudela <lillian.tudela@gfd.guam.gov>, Claudia Acfalle <claudia.acfalle@gsa.guam.gov>, Anita Cruz <anita.cruz@gsa.guam.gov>, Belinda Paulino <belinda.paulino@gsa.guam.gov>, Joey San Nicolas <joeysannicolas@gfd.guam.gov>

Good afternoon Kevin,

I apologize for the delay in responding to your question about the rejection of one or more bids by GSA for failure to meet the requirement of the Invitation for Bids (IFB) that the apparatus be delivered within 240 calendar days upon receipt of the purchase order.

I have reviewed the IFB and I have reviewed the Technical Bid Evaluation Criteria contained within the IFB. I do not believe there is any serious ambiguity created by the evaluation category titled 'Manufacturing and Delivery schedule'. The IFB states clearly and unequivocally that the apparatus is to be delivered within 240 days on at least five occasions, to wit:

- Page 3 of 116. The Multi-Step Bid Announcement page. [applicable to both pumpers]

"REQUIRED DELIVERY DATE: 240 Days Upon Receipt of Purchase Order. For a period of one (1) year on an as needed basis. This is an indefinite bid quantity.

- Page 4 of 116. [applicable to both pumpers]

Delivery:

EXHIBIT B

240 Days upon receipt of purchase order. Schedule time and quantity will be coordinated between a successful bidder and the requesting department on an as needed basis.

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- Page 24 of 116. [applicable to New and Current Year Custom Cab-Forward Fire Pumper]

39. **JUSTIFICATION OF DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within time specified. ...

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- Page 32 of 116. [applicable to New and Current Year Custom Cab-Forward Fire Pumper]

DELIVERY TERMS

The contractor shall deliver the completed apparatus to the agreed upon ocean port for overseas shipping to Guam.

The contractor will deliver the completed apparatus within 240 calendar days upon receipt of purchase order, with all equipment specified, to the current headquarters of the Guam Fire Department, Guam, USA.

The contractor/bidder must submit a firm delivery time (number of days from date of order to date of delivery) of said apparatus with the technical bid. Quoting number of days after receipt of all components is unacceptable. A deduction of per day will be made for each day over and above the stated delivery date. The penalty will also apply if the unit is delivered and rejected, until the unit is returned meeting specifications.

- Page 91 of 116. [applicable to Urban/Wildland Interface Pumpers]

DELIVERY TERMS

The contractor shall deliver the completed apparatus to the agreed ocean port for overseas shipping to Guam.

The contractor will deliver the completed apparatus within 240 calendar days from the date of notice of award, with all equipment specified, to the current headquarters of the Guam Fire Department, Guam, USA.

The contractor must submit a firm delivery time (number of days from date of order to date of delivery) of said apparatus with the technical bid. Quoting number of days after receipt of all components is unacceptable. A deduction of per day will be made for each day over and above the stated delivery date.

The penalty will also apply if the unit is delivered and rejected, until the unit is returned meeting specifications.

The IFB is very clear on delivery time requirements. The information in the IFB concerning technical bid evaluation criteria concerning this matter states:

Manufacturing and Delivery schedule

(20 Points)

- a.) Manufacture and Delivery Timelines. (10 points)
- b.) Acceptability of transportation, shipping and delivery procedures. (5 points)
- c.) Accessibility to manufacturing and transportation Progress information. (5 points)

Given the comprehensive instructions and guidance in the IFB dealing with manufacturing, shipment, packaging and ultimate delivery of the apparatus, there is no real ambiguity created with this evaluation factor that could lead one to reasonably believe that the 240 day requirement was at all flexible. There are numerous matters that are being evaluated in this criteria beyond just the ultimate delivery date, to include giving points to a bidder who can deliver in under 240 days.

Also, given that GFD published a draft set of specifications, to include a proposed delivery timeline of 180 days, and then lengthened this to 240 days in the published IFB upon the request on one or more potential bidders, there is established a good record for GFD being sensitive to the timeline issue and taking into account feedback from prospective bidders. All bidders should have known that the 240 day timeline was firm.

GSA is correct in rejecting any bidder who is unable to meet the timeline of 240 days. This is a material requirement of the IFB and rejection of a non-conforming bidder is appropriate under the circumstances.

Please let me know if you would like this matter placed into a more formal Information and Guidance Memorandum.

Thanks, John.

Saina Ma'ase,

Si' John Weisenberger

Assistant Attorney General

Ufisinan Hinirat Abugao

Office of the Attorney General

287 West O' Brien Drive

Hagatna, Guam 96910

Ph: 671-475-3324 ext. 3097

Email: jweisenberger@guamag.org

URL: www.guamag.org

From: Kevin Reilly [<mailto:kevin.reilly@gfd.guam.gov>]
Sent: Tuesday, January 15, 2013 9:28 AM
To: Edward Artero; Tanya Bejado; Lillian Tudela
Cc: John Weisenberger
Subject: Fwd: Evaluation criteria

----- Forwarded message -----

From: **Robert Kono** <robert.kono@gsa.guam.gov>
Date: Fri, Jan 11, 2013 at 2:12 PM
Subject: Re: Evaluation criteria
To: Kevin Reilly <kevin.reilly@gfd.guam.gov>
Cc: Claudia Acfalle <claudia.acfalle@gsa.guam.gov>, Anita Cruz <anita.cruz@gsa.guam.gov>

2 GARR DIVision 4 section 3109 (n)(2)--- failure to conform in all material respects to the Invitation for Bids which means that they are not responsible bidder.....rhk

On Thu, Jan 10, 2013 at 1:29 PM, Kevin Reilly <kevin.reilly@gfd.guam.gov> wrote:

Mr. Kono,

Thank you for your time yesterday as we evaluated the bid submission for the fire apparatus. Shortly after we concluded the evaluations, I received a call from Mr. John Weisenberger at the AGO as well as Fire Chief San Nicolas inquiring about the outcome of the meeting. Clarification is requested on the guidance used for the disqualification of vendors, more specifically the rules that govern what are reasons for immediate disqualification. You stated that because the vendors did not comply with the delivery terms, they were disqualified and their submissions were not evaluated. Can you please list or define what other

terms, if any, are grounds for immediate disqualification by GSA and where those regulations can be found?

The delivery dates for the apparatus, among other issues, was specified by the GFD after receiving feedback from for the vendors. Originally, the apparatus were to be delivered 180 days from the date of award of contract; however, in consideration of the vendors, the date was extended to 240 days. I am also inquiring because the delivery terms are listed as an item that will be graded on the evaluation worksheets. In order to prevent this confusion for future projects, please explain what the deciding factors are between allowable exceptions versus automatic disqualifiers when considering submissions?

v/r

Kevin J. Reilly
Firefighter II, Guam Fire Department
Special Projects

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Kevin J. Reilly
Firefighter II, Guam Fire Department
Special Projects

Clarifications to Specifications

1. Reference Page 35: MULTIPLEX COMPONENTS WARRANTY

CLARIFICATION: The multiplex components shall be warranted against defective materials or workmanship for a period of **five (5) years** from the date of delivery to the original purchaser. The warranty shall also include a standard repair time for covered components. A copy of the fire apparatus manufacturer's warranty shall be included with the bid.

PIERCE will provide a hard-wired system as this is the only place a multiplexed system is mentioned in the truck specifications.

2. Reference Page 37: REAR SUSPENSION

CLARIFICATION: The rear springs shall be semi-elliptical, **10 leaves** with a ground rating of 24,000 pounds. Spring hangers shall be castings with provisions for lubrication. **The grease fittings shall be accessible without removing the wheels or cutting any sheet metal.**

The spring pins shall be provided, with double "figure-eight" grease grooves. The bushing that holds the spring pin in place **shall also have a grease groove.**

PIERCE has improved our suspension offering. Our new system is a 12-leaf, single slipper spring system. Additionally, no lubrication is required with the new system.

3. Reference Page 39: EXHAUST INSULATION BLANKET

CLARIFICATION: An insulation "blanket" wrap shall be provided **on the turbo charger** and exhaust delivery pipe for reduction of heat to the cab.

PIERCE will provide an insulated blanket on the exhaust past the turbo, but not on the turbo itself. A stainless steel heat shield will be provided between the turbo and the cab.

4. Reference Page 51: INTERCOM SYSTEM

CLARIFICATION: An intercom system shall be provided. Intercom stations shall be provided for the driver, officer, and pump panel positions. All positions shall have radio interface capability.

The following components (or equivalent component types) shall be supplied with this system:

- One (1) 3010R Intercom Unit
- One (1) Mobile Radio Interface
- Two (2) HM-10 Interior Headset Modules
- One (1) PP-20 Exterior Headset Module
- One (1) UH-10S Headset
- One (1) UH-10 Headset
- Four (4) UH-20 Headset
- Six (6) Headset Hanger Hooks

PIERCE will provide a Firecom model 5100D intercom unit as the 3010R has been discontinued. The UH-10

John Weisenberger,
Asst. AG/AG's Ofc.
(continued):

delivery: how they were gonna get the truck to the west coast, packing it on the ship, shipping it to Guam, dodda da... it was a fairly, even the delivery was fairly technical. So the question on the evaluation wasn't just, "Can you delivery it in 240 days?" I don't have it in front of me, but maybe you do, Paul. It ... the question on the evaluation was, an evaluation of what they're saying on their bid as to how they're gonna get the trucks delivered to Guam. One of the factors being 240 days. Other factors being how they're getting it to the West Coast, who they're shipping it with, dodda da-da... I think it was an evaluation of a **process** of delivery, not an evaluation of 240 days. And I agree with Paul that one of the things the evaluators may have considered although it doesn't say this on the instrument is, obviously, if someone says I'll get it to you in 180 days, you might want to give them extra points because they're... and so that might make up with some other technical problem they have somewhere else.

Also, as you know, Claudia, is the bid says **five different places** – "240 days". It even **highlights** it. It's not like the 240 days was a mystery. And they, and so I, that was my, because I of course was asked and I don't know, Claudia, if you were in the email dialogue between Bob Kono, myself and Kevin, I think Paul is involved, where we discussed this and because we anticipated this problem. And so my sense is, just my sense is, although this is really something for you folks to try to figure out based on the process you went through, is that there is a good record that the fire department and GSA has in getting feedback from people prior to the publication of the bid; and you took into account the time and actually accommodated it. I think that's in the favor of the bid in the process being upheld. That you have one **good bid** that met all the technicalities including the 240 days. And so, to not award them the bid when they met it all, in favor of some company who didn't clearly meet a bid specification that was five times sent out to them as being pretty important to the Fire Department; and then finally the process: is the process. And it seems to me that it isn't just a question of give us 10 points because we said 240, it's give us 10 points because we've been able to convince you in our bid that we are gonna accommodate all of these factors that you put in there on how to get a truck from here to there and it doesn't have damage and it hasn't been covered with salt, and it isn't ... etc.

So, and ... this is the **best**, I will make one other comment. This is the **best written Morrico complaint** I've ever read. There's absolutely no obscenity - anywhere, and somebody wrote full sentences! So, it's easier to understand. And I guess the gist of this is that they're just not happy because they think there was some... I guess the real question is, was there some ambiguity created by the evaluation process about delivery? And if there wasn't any ambiguity or if the ambiguity was not sort of fatal to the process, then maybe the process should be upheld as being done correctly.