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Attorneys for  
Morrico Equipment, LLC

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 11/14/2014

TIME: 3:50  AM  PM BY: M.B.

FILE NO OPA-PA: 14-009

OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of ) Docket No. OPA-PA-14-009  
)  
Triple J Enterprises, Inc. )  
)  
Appellant. ) **MOTION TO SET ASIDE ORDER**  
) **DISMISSING APPEAL WITH PREJUDICE**  
)  
)

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Morrico Equipment, LLC, an Interested Party in the above-captioned appeal, hereby moves the Office of Public Accountability (“OPA”), to set aside its order dismissing this appeal with prejudice.

This matter arises out of an invitation for bid regarding the procurement of school buses, GSA065-14 (the “IFB”). The General Services Agency (“GSA”), conducted a bid opening pursuant to the IFB on August 12, 2014. Morrico received a notice from the GSA on September 9, 2014, advising that its bid was rejected for failure to meet an exterior rivet specification and that the IFB would be re-bid. *See, Exhibit A.* The GSA also rejected the bid of Triple J Enterprises, Inc. (“Triple J”), as non-responsive for failure to submit diagrams/seating plans expressly required by the terms of the IFB, and the GSA similarly informed Triple J that the IFB would be re-bid. *See, Triple J’s October 29, 2014, Notice of Appeal, Exhibit C, Exhibit A thereto.*

Triple J protested the determination that it was non-responsive. On September 26, 2014, the GSA denied Triple J’s protest. *See, Triple J Notice of Appeal, Exhibit L.* Claiming that it did not

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receive notice of the protest denial, Triple J did not file its appeal herein until October 29, 2014. The rules governing procurement appeals before the OPA require that all interested parties be informed of the filing of an appeal. 2 GAR § 12104(c)(2) provides in part that “[t]he Chief Procurement Officer ... shall give notice of the Appeal to the contractor if award has been made or, if no award has been made, to all Interested Parties ... .” *See, e.g., In the Appeal of Fukuda Enterprises, LLC*, Appeal No.: OPA-PA-14-002, April 22, 2014 Notice to Interested Parties. The Chief Procurement Officer of the GSA did not give notice to Morrico of the Triple J appeal.

On November 7, 2014, Triple J, the GSA and the Guam Attorney General’s Office (“AGO”), submitted a purported settlement agreement to the OPA, which the OPA signed on November 10, 2014. The settlement agreement provided that Triple J would be awarded a contract for nine (9) buses and that Morrico would be awarded a contract for three (3) buses. The settlement agreement also provided for a dismissal of the Triple J appeal with prejudice. Morrico was not a party to the settlement agreement, did not sign the settlement agreement and does not approve the terms of the settlement agreement. The settlement agreement negotiated between Triple J, the GSA and the AGO, from which Morrico was excluded, provided that “[i]f Morrico protests the terms of this settlement then all buses shall be awarded to Triple J.” There is no law or regulation which allows the GSA, the AGO and a private party to eviscerate the right of a procurement bidder to protest illegal procurement actions or to punish it for doing so.

Morrico entered its appearance herein on November 10, 2014. Morrico desires to be heard with respect to the merits of the Triple J appeal. Triple J’s bid was non-responsive for failure to include in its bid packet the drawings/seating plans that were expressly required by the terms of the IFB. Triple J’s compliance with the IFB specifications could not be verified without that required documentation and this was a material omission that could not be excused as a minor informality.

This material failure was explicitly noted by the committee assembled to evaluate the Triple J bid. *See*, Triple J Notice of Appeal, Exhibit N. Based on the lack of information provided by Triple J, the committee could not know whether the bus to be supplied by Triple J conformed to all of the IFB specifications. Finally, Triple J did not even file a timely appeal to the OPA and its excuses for failing to timely appeal are specious.

The OPA did not have jurisdiction over the purported settlement agreement. The OPA only has jurisdiction to hear matters properly submitted to it. *See*, 5 GCA § 5703. The only question before the OPA on Triple J's appeal was whether the GSA properly denied the Triple J protest. 2 GAR § 12201, pursuant to which Triple J brought this appeal, provides only that "[t]he Public Auditor shall determine whether a decision on the protest of method of selection, solicitation or award of a contract, or entitlement to costs is in accordance with the statutes, regulations, and the terms and conditions of the solicitation." Triple J did not appeal the question of whether GSA properly exercised its discretion in setting aside its decision to cancel and re-bid the procurement, in withdrawing its rejection of Triple J's bid for being non-responsive or in awarding Triple J a contract. Those questions were not framed by the Triple J appeal and the OPA has no jurisdiction to review or ratify those determinations. *See, e.g., In the Appeal of Peter Alexis Ada, dba APM: Guam Medical Referral Services*, Appeal No. OPA-PA-11-016, January 6, 2012, Decision, p. 7 ("APM did not protest the issues identified herein and they were not reviewed by GSA nor are they part of GSA's August 4, 2011 Decision. Thus, the Public Auditor does not have jurisdiction to hear these issues because they are not properly before her and GSA's Motion to Exclude Appellant's Comments on the Agency Report is here GRANTED.")

Accordingly, based on the foregoing, Morrico respectfully requests that the OPA set aside its order dismissing this appeal with prejudice and allow Morrico to be heard on the merits thereof.

*In the Appeal of Triple J Enterprises, Inc.*  
OPA-PA-14-009  
Motion to Set Aside Order Dismissal Appeal with Prejudice

DOOLEY ROBERTS & FOWLER LLP

Date: November 14, 2014

By:

  
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**KEVIN J. FOWLER**  
Attorneys for Morrigo Equipment, LLC

KJF: tg/M-278.19

GENERAL SERVICE AGENCY  
 (Ahensian Setbision Hinirat)  
 Government of Guam  
 P.O. Box FG, Agana, Guam 96910  
 Tel: 477-1710-13 Fax: 472-4217 / 475-1716/27

Accountability \* Impartiality \* Competence \* Openness \* Value

## BID STATUS

MORRICO EQUIPMENT  
 197 Ypao Road  
 Tamuning, Guam 96913  
 Tel: (671) 649-1946/ Fax (671) 649-1947

BID INVITATION NO.: GSA-065-14

OPENING DATE: August 12, 2014

### SCHOOL BUS (60 PASSENGER)

The following is the result of the above-mentioned bid. Refer to the items checked below.

- [ ] Cancelled (in its entirety), or partially cancelled due to:
- ( ) Insufficient funds;
  - ( ) Change of specifications; or
  - (-) Insufficient number of bidders.
- [X] Rejected due to:
- ( ) Late submission of bid;
  - ( ) No bid security or insufficient bid security;
  - ( ) Not meeting the delivery requirement as stated in the IFB;
  - (X) Non-conformance with the specifications: (See Remarks)
  - ( ) High price
  - ( ) Others

#### REMARKS:

Non-Compliance with the following "All exterior body panels, skirts and rub rails shall be fastened with Anti-Corrosive Rivets". Thomas Built uses a combination of Structural adhesives, anti-corrosive conventional style rivets, anti-corrosive self-piecing rivets and anti-corrosive fasteners are used to adhere to the exterior body panels, skirts, and rub rails to the bus structure.

[X] Bid recommended for award: A RE-BID WILL BE SCHEDULED AT A LATER DATE AND TIME.

REMARKS: Thank you for your participation with this bid. Please send your authorized representative to pickup your original bid status and Bid Bond/Cashier's Check

  
 CLAUDIA S. ACFALLE  
 Chief Procurement Officer

Please Print
ACKNOWLEDGEMENT COPY (Re-fax to GSA)
Received By: _____
Date: _____
Agency Name: _____
Fax #: 475-1727

