

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



FAX

To:	Claudia S. Acfalle Chief Procurement Officer General Service Agency	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Fax:	(671) 475-1727 (671) 472-4217	Pages:	7 (including cover page)
CC:	R. Marsil Johnson Attorney for MidPac Far East Phone: (671) 477-7857 Fax: (671) 472-4290	Date:	October 5, 2015
		Phone: Fax:	475-0390 x. 203 472-7951

Re: OPA-PA-15-011 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

See attached for reference. Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,

Jerrick Hernandez

Audit Staff

jhernandez@guamopa.org

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OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

October 5, 2015

Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
148 Route 1 Marine Corps Drive
Piti, Guam 96915
VIA FACSIMILE: (671) 475-1727 / 472-4217

Re: Notice of Receipt of Appeal – OPA-PA-15-011

Dear Ms. Acfalle,

Please be advised that Mid Pac Far East (MidPac) filed an appeal with the Office of Public Accountability (OPA) on October 2, 2015 regarding the General Services Agency's (GSA) response to MidPac's protest relative to Invitation for Bid No.: GSA-093-15, Miscellaneous Items & School Bus Parts. OPA has assigned this appeal case number OPA-PA-15-011.

Immediate action is required of GSA 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 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 appeals. 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.

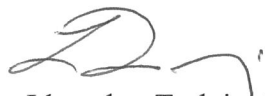
Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Monday, October 12, 2015**, five work days following receipt of this notice of appeal; and 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 **Monday, October 19, 2015**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to MidPac. OPA respectfully asks that GSA provide one original and two copies of the procurement record as the Guam Procurement Law and Regulations require

require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 203, or jhernandez@guamopa.org, should you have any questions regarding this notice.

Sincerely,

A handwritten signature in black ink, appearing to read 'Llewelyn Terlaje', with a stylized flourish at the end.

Llewelyn Terlaje, CGAP, CGFM
Audit Supervisor

Enclosure: Notice of Appeal – OPA-PA-15-011

Cc: Craig Wade, MidPac President/CFO

Form and Filing:

1. On July 31, 2015, GSA issued an Invitation for Bid, GSA-093-15 (“the IFB”), for “Miscellaneous Items & School Bus Parts”.

2. On August 25, 2015, four bidders responded to the IFB and all bids were opened.

3. A Bid Status document, dated September 28, 2015, was provided to MPFE indicating that MPFE’s bid had been rejected due to “[n]o bid security or insufficient bid security.” *See* Exhibit “A”. The Bid Status further remarked: “Standby Letter of credit in the amount of \$42,000.00 (Bid security short by \$2,263.41) Total Amount of Bid Amount: \$295,089.37.” *Id.*

4. The price list per vendor received from GSA indicates that MPFE had mistakenly transposed the decimal in the price per foot in Line Item 79.1, described as “HEATER HOSE (3/4 Inch Inner Diameter) 50 feet Roll”. *See* Exhibit “B”. As a result, the price per foot incorrectly read as \$537.00 per foot instead of \$5.37 per foot. The only other bidder on Line Item 79.1 was Morrigo Equipment, LLC (“Morrigo”), which indicated a price per foot of \$9.04. Despite the error in the price per foot, the total price per roll was correctly entered at \$268.50 per roll. This price was \$183.50 lower than Morrigo, the next lowest bidder, which bid a price per roll of \$452.00.

5. On information and belief, GSA used the mistakenly entered price per foot of \$537.00 and multiplied that figure by 50 to obtain its own price of \$26,850.00 per roll, despite the per roll price of \$268.50 entered by MPFE. GSA then combined its \$26,850.00 per roll price with MPFE’s extended prices for all Line Items in the IFB and came to its own total bid price for MPFE of \$295,089.37. GSA then rejected MPFE’s bid on the basis that the \$42,000.00 standby letter of credit provided by MPFE was insufficient to cover the new total bid price GSA had calculated for MPFE based on the obviously mistakenly entered per foot price of \$537.00.

6. As a result, it appears that all of the line items for which MPFE was the lowest bidder will be awarded to the next lowest bidder instead.

7. The original protest made by MPFE was made on September 28, 2015. *See* Exhibit “C”. In the protest, Craig Wade, the President/CFO of MPFE, disagreed with GSA’s determination that MPFE’s bid bond was insufficient. Mr. Wade noted that MPFE’s extended prices totaled \$268,507.87, not \$295,089.37 as erroneously calculated by GSA.

8. GSA responded to MPFE’s protest in a letter dated September 29, 2015. *See* Exhibit “D”. There, GSA denied the protest, noting that “[i]n reviewing your bid submittal, there was no evidence that a mistake occurred.”

9. MPFE is appealing GSA’s decision on MPFE’s protest on the basis that it is evident on the face of MPFE’s bid that the price per foot for Line Item 79.1 entered by MPFE was a mistake and that the intended correct bid is clearly evident on the face of MPFE’s bid given the price per roll of \$268.50 which was entered right next to the mistaken figure.

10. 2 GAR Division 4 Section 3109(m)(4)(C) states that:

(C) Mistakes where intended correct bid is evident. If the mistake and the intended correct bid is clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transportation errors, and arithmetical errors.

11. MPFE’s position is that the \$537.00 per foot price entered in Line Item 79.1 was clearly a typographical error. This is supported by the fact that the \$268.50 price per roll entered in MPFE’s bid is the product of \$5.37 multiplied by 50 feet, the fact that the only other bidder for Line Item 79.1 bid \$9.04 per foot, and the fact that the \$42,000.00 standby letter of credit is sufficient if the price per roll entered by MPFE is used to calculate the total bid amount instead of the price per roll calculated by GSA.

12. GSA’s decision to exacerbate the typographical error by using it to calculate an absurdly disproportionate price per roll and then reject MPFE’s bid in its entirety was improper given the rule on mistakes set forth in 2 GAR Division 4 Section 3109(m)(4)(c).

13. GSA's decision is also improper given 5 G.C.A. §5001(b)(5), which provides that one of the underlying principles and policies of the Guam Procurement Law is "to provide increased economy in territorial activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Territory." GSA's decision to reject MPFE's bid based on a mistake that was obvious on the face of the bid will result in an award for every line item for which MPFE was the lowest bidder to other parties with higher bid prices. This will result in a larger overall cost to the government of Guam.

14. MPFE requests that the Office of the Public Auditor determine that the \$537.00 per foot price was clearly a mistake, determine that the intended correct bid price was clearly evident on the face of the bid document, order that the bid document be corrected to the intended correct bid of \$5.37 per foot, and overturn GSA's rejection of MPFE's bid on the basis of insufficient security.

15. MPFE has attached all supporting documents as exhibits hereto.

Declaration Regarding Court Action:

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

DATED this 2nd day of October, 2015.

BLAIR STERLING JOHNSON & MARTINEZ
A PROFESSIONAL CORPORATION

BY: 

R. MARSIL JOHNSON

Attorneys for Appellant Mid Pac Far East

TRANSACTION REPORT

OCT/07/2015/WED 09:29 AM

BROADCAST

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	OCT/07	09:24AM	4751727	0:01:30	7	MEMORY OK	SG3 4523
002		09:26AM	4724217	0:01:13	7	MEMORY OK	SG3 4523
003		09:28AM	4724290	0:01:26	7	MEMORY OK	SG3 4523
TOTAL				0:04:09	21		

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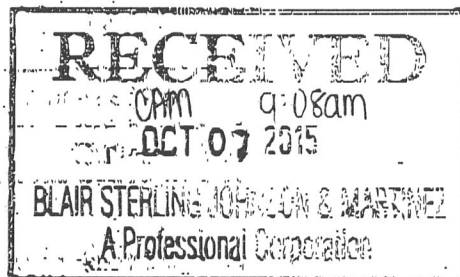
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jhernandez@guamopa.org

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Handwritten signature/initials

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