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 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

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Attorneys for the Government of Guam (People of Guam)

**THE OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEAL**

IN THE APPEAL OF:)	DOCKET NO. OPA-PA-15-011
)	
MID PAC FAR EAST)	
)	FORMAL HEARING BRIEF
Appellant.)	
)	
)	
)	

Comes now, the Office of the Attorney General, on behalf of the General Services Agency, and hereby submits its formal hearing brief in this matter.

This matter concerns the bid by Mid Pac Far East in GSA-093-15, which was rejected due to insufficient bid security. Mid Pac Far East claimed the shortfall was due to a mistake, and requested reconsideration. GSA reviewed the bid submittal and determined that there was no evidence a mistake occurred.

The mistake Mid Pac Far East claims was made is in item no. 79.1 of its bid. For that item number, the unit price is listed as "\$537.", while the price extension is listed as "\$268.50"

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The appeal hinges on the issue of whether the mistake and intended correct bid is clearly evident on the face of the bid document. This is similar to the issue discussed in OPA-PA-15-004, G4S Secure Solutions (Guam) Inc. vs. General Services Agency (GSA).

Mid Pac Far East submits five points as to why the unit price is a clear mistake – the lack of zeroes following the unit price, the extended price comparison, the comparable price of other bidders, the bid bond submitted, and the price of other item numbers.

Mid Pac Far East then submits two points as to why the intended unit price was clearly evident – the lack of zeroes following the unit price, and the extended price comparison.

With regard to the lack of zeroes, Mid Pac Far East simultaneously asks this to be evidence of both a clear mistake of the unit price and clear evidence of the intended unit price. GSA disagrees. There could be several possibilities as to why the unit price is listed as such. The unit price may have been \$537.00, with the error being that additional zeroes simply weren't added on. The unit price may have been \$53.70, with the decimal point only being one point off instead of two and one zero missing instead of two or none, as the case may be. Mid Pac Far East is essentially asking GSA to ignore what is clearly written and to substitute in the one possibility that makes its bid valid.

As to the extended price comparison, in the Sealed Bid Solicitation Instructions, Item 2(c) in relevant part: "In case of discrepancies between a unit price and extended price, the unit price will be presumed to be correct." There are clear instructions to the bidders that unit price prevails.

While Mid Pac Far East argues that by comparing its bid to other bidders, the amount should have been recognized as comparatively inflated, it was not obvious on the face of the bid document at the time of the bid opening. GSA does not compare prices until it is determined which bids are responsive, and only compares between qualifying bids in making its selections.

Mid Pac Far East also makes the recursive argument that because the bid bond amount submitted was lower, GSA should be aware of a potential mistake. That responsibility does not fall

on GSA, however. GSA has only the duty to determine whether a bid bond is sufficient to cover the amount listed as per unit prices.

Lastly, Mid Pac Far East claims that comparable items listed have much smaller prices, and this should have tipped off GSA that a mistake was made. Again, this is essentially a request that GSA look into why each item was bid as it was, which is not the legal duty it has. There could be any number of reasons why two similar items have wildly varying prices – supply problems, item discontinuance, extremely large demand for one item and not another.

In the integrity of the bid process it is important the bidders be held responsible for their decimal points on the unit price line of their Bid Proposals and for the correct dollar amount of their Bid Bond/Security based on the total amount of their Bid Amount. None of the reasons listed by Mid Pac Far East are clear evidence of either a mistake, or the intended amount. GSA submits that the Office of the Public Auditor find that neither mistake nor the intended amount are clearly evident on the face of the bid document, and dismiss this appeal.

Dated this 24th day of November, 2015.

OFFICE OF THE ATTORNEY GENERAL
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By:



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