

Morrigo learned on December 30, 2015, that the GSWA proceeded with a bid opening on December 22, 2015. The GSWA conducted the bid opening one day before it served Morrigo with its December 23rd letters denying Morrigo's protests regarding the IFB. The GSWA had previously respected the stay under 5 GCA section 5425(g). In its December 23rd letters denying Morrigo's protests, it did not even advise that it had proceeded with a bid opening the day before.

The Guam Supreme Court has held that the administrative stay arising upon the protest of a procurement solicitation remains in effect until the final resolution of the protest, to include appeals to the Superior Court of Guam and the Supreme Court of Guam. *See, Teleguam Holdings, LLC v. Territory of Guam*, 2015 Guam 13, ¶ 31 (2015) ("we hold that in a procurement controversy under 5 GCA § 5425, the automatic stay set forth in section 5425(g) remains in effect during the fourteen day period following OPA's decision and commencement of a civil suit within the Superior Court and continues until final resolution of the action by the Superior Court."). *See, also, In the Appeal of JMI Edison*, Appeal No: OPA-PA-13-010, September 20, 2013, Order Granting Motion Re Automatic Stay ("JMI filed a timely Procurement Protest and thereafter filed a timely Notice of Appeal to the Office of Public Accountability ("OPA"). By doing so, an automatic stay is triggered and remains in effect until final resolution of JMI's protest. The automatic stay is triggered upon the filing of a timely protest; the filing of a timely appeal to the OPA; and the filing of a timely appeal to the Superior Court of Guam. ... Final resolution of a protest includes the time period of an appeal after protest."). Accordingly, a stay is in effect and the OPA has the jurisdiction to enforce that stay.

The GSWA's reliance on the status of GBB as a federal receiver and the necessity to timely comply with the Consent Decree is unfounded and does not override local Guam procurement law.

The subject Consent Decree required that the government of Guam close the Ordot Dump, construct a cover so no further pollutants were discharged into waters of the United States, and construct an environmentally compliant new landfill. *See*, Notice of Appeal, Exhibit H. The Ordot Dump is closed, work to seal it has progressed to near completion and a new environmentally sound landfill has been opened. The acquisition of rear loader packer bodies simply does not appear related to the fulfillment of the mandates of the Consent Decree, which have largely been met. Even if the rear loader packer bodies were necessary to meet the mandates of the Consent Decree, the express terms of the Consent Decree require that the projects mandated thereunder be performed in accordance with the procurement laws of the government of Guam. *Id.*, p. 11, ¶ 9(h) (“DPW shall award a construction contract for the new MSWLF in accordance with applicable procurement rules and policies of the Government of Guam.”).

Additionally, federal law governing receiverships expressly requires that a receiver operate the receivership property in conformance with local law, which would obviously include Guam’s procurement law. *See*, 28 USC section 959(b) (“a ... receiver appointed in any cause pending in any court of the United States ... shall manage and operate the property in his possession as such ... receiver ... according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.”). Because a federal receiver is required to comply with local law, the GSWA, even if run by a federal receiver, cannot unilaterally trump the will of Congress in its enactment of federal law requiring that a receiver operate the receivership property in compliance with local law.

In the Procurement Appeal of Morrigo Equipment, LLC
Emergency Motion to Enforce Stay

Given the foregoing, Morrigo requests that the OPA immediately proceed to enforce the stay of procurement arising under 5 GCA § 5425(g).

Dated this 4th day of January, 2016.

DOOLEY ROBERTS & FOWLER LLP

By: 

KEVIN J. FOWLER
Attorneys for Appellant
Morrigo Equipment, LLC

KJF: tg/M-278.29