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In the Procurement Appeal of	)	**COMMENTS ON AGENCY REPORT**
MORRICO EQUIPMENT, LLC,	)	
Appellant.	)	Docket No. OPA-PA-15-014

The GSWA filed its Agency Report & Agency Statement herein on December 23, 2015. While the GSWA states that Morrico submitted two protests prior to filing this appeal, it only filed this appeal regarding the GSWA's denial of its September 28, 2015, protest. The GSWA denied Morrico's September 28th protest on November 22, 2015. Morrico timely filed an appeal from that protest denial on December 7, 2015.

The GSWA let the subject IFB on August 18, 2015. Morrico did file a protest of that IFB on September 1, 2015, on the basis that the 90 day delivery time specification reduced competition. The GSWA denied that protest on September 4, 2015.

Morrico then submitted a bid on the IFB and the GSWA held a bid opening on September 14, 2015. On September 24, 2015, the GSWA sent Morrico a "Bid Status" advising that its bid had been rejected due to its failure to meet the 90 day delivery time specification. The GSWA also rejected the bid of Far East Equipment Company, LLC ("Far East"), the only other bidder, for

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failure to submit descriptive literature. *See*, Morrico's December 7, 2015, Notice of Procurement Appeal, Exhibit C.

Morrico protested the rejection of its bid in a September 28, 2015 protest. As noted therein, while the 90 day delivery time specification is not per se unlawful, 5 GCA § 5010 only allows an agency to consider delivery time in one limited circumstance:

> Except in emergency situations, lower price bids are generally preferable to shorten delivery or performance bids. Delivery time may be considered as a factor in making an award to a responsive bidder ***only if*** his average delivery time bid is at least ten percent (10%) shorter than the average delivery time bid of a lower price responsive bidder and if the price offered by the bidder offering the faster delivery or performance does not exceed one hundred five percent (105%) of the lower price bidder.

5 GCA § 5010 (emphasis added). As noted above, the GSWA rejected the bid of Far East because it failed to submit descriptive literature. Therefore, there was no bidder with a faster delivery time that the GSWA could compare against Morrico's bid under the provisions of 5 GCA § 5010. In addition, Far East's bid price exceeded 105% of Morrico's lower priced bid. *See*, Morrico's December 7, 2015, Notice of Procurement Appeal, Exhibits C and D. Accordingly, even if Far East's bid was responsive, the GSWA still could not have awarded it a contract under 5 GCA § 5010.

Based on the foregoing, the OPA should uphold Morrico's appeal herein.

Dated this 4th day of January, 2016.

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