



OFFICE OF THE PUBLIC AUDITOR

PROCUREMENT APPEALS

IN THE APPEAL OF  
FAR EAST EQUIPMENT COMPANY LLC,  
  
APPELLANT.

Appeal No. OPA-PA-07-010

**FINDINGS AND RECOMMENDATIONS  
OF HEARING OFFICER**

**I. INTRODUCTION**

These are the findings of the Hearing Officer, Robert G.P. Cruz, Esq., on an appeal filed on November 20, 2007, by Far East Equipment Company LLC, (Hereafter "Far East") regarding the Port Authority of Guam's (Hereafter "PAG") GSA/PAG 07-006 bid solicitation for fork trucks also known as "forklifts." The General Services Agency (Hereafter "GSA") was the administering procurement agency for the GSA/PAG 07-006 bid.

Two Pre-Hearing conferences were held before the Hearing Officer. The first Pre-Hearing conference was held on February 5, 2008. A second Pre-Hearing conference was held on March 27, 2008. The Pre-Hearing conferences explored possibilities of narrowing issues, settlement, as well as disclosing witnesses that might be called to testify at the formal Hearing. Far East requested the formal Hearing, which was held on May 13, 2008. Present at the formal Hearing and making arguments on behalf of their clients were Ignacio C. Aguigui, Esq., Lujan, Aguigui & Perez, LLP, representing PAG and GSA; John A. Limticao, Vice President, representing Far East; and Kevin J. Fowler, Esq., Dooley, Roberts and Fowler, LLP, representing

1 Morrico Equipment LLC, (Hereafter "Morrico"). A Motion to Dismiss was filed by PAG on  
2 May 13, 2008, and verbally opposed by Far East.  
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## 5 II. FINDINGS OF FACT

6 These findings of fact are based on the Procurement Record, all documents submitted by  
7 the parties in this appeal, and all testimonies and arguments presented at the May 13, 2008,  
8 Hearing on this matter.  
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11 1. At issue is whether the bid of the Appellant Far East was non-responsive to Bid No.  
12 GSA/PAG 07-006 for purchase of multiple Fork Trucks of varying sizes. On August 24, 2007,  
13 Far East submitted its bid for Item 1.4 which was specified as a 40,000 pound forklift at 24  
14 inches center of gravity. It did not bid for the Item 1.1, 1.2, or 1.3 forklifts of other sizes. In its  
15 Statement of Appeal, Far East argues that it is the lowest responsible bidder for Item 1.4, and that  
16 GSA should not award the contract for this item to Morrico, which won the bid for 1.4 and all  
17 other sizes of fork trucks.  
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20 2. Far East argues that its bid proposal met the requirements of the request for bids with  
21 respect to forklift length and size of engine. On October 8, 2007, Far East was given a Bid Status  
22 notification advising that its primary bid for Item 1.4 was rejected because it did not meet the  
23 minimum horsepower (hp) requirement of 230 hp and a minimum fork length requirement of 96  
24 inches. Far East's bid was understood by GSA to be for a Kalmar DCE 180-6 forklift with a 220  
25 hp "Cummins" model engine and a Dana TE 1300 transmission with a fork length of 47 inches.  
26 See Far East's Exhibit B and GSA Procurement Record. In the descriptive literature submitted  
27 by Far East, the only "Cummins" engine available for the Kalmar DCE 180-6 model with a Dana  
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1 TE 1300 transmission had a rated hp of 185 not 220 as Far East indicated in its bid. See GSA  
2 Procurement Record and PAG's Motion to Dismiss. The descriptive literature is the technical  
3 brochure required to be submitted by the bidder to support their bid offers. See GSA/PAG 07-  
4 006 General Terms and Conditions. In the alternative, Far East also proposed a 44,000 pound,  
5 Kalmar DCE 200-12 forklift. In the descriptive literature submitted, the engine type available  
6 for the Kalmar DCE 200-12 model is a Cummins engine with a rated 215 hp. Both Far East's  
7 primary and optional proposals did not meet the required specifications of the bid.  
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10 3. After learning that Far East's bid for a forklift truck was not selected because GSA  
11 determined that Far East did not meet specifications under the bid, Far East claimed that if  
12 awarded the contract it could provide a fork length of 96 inches, and that the failure to meet the  
13 230 hp minimum requirement was negligible. Far East has also argued that the 220 hp engine on  
14 the 40,000 pound forklift offered could produce 230 hp at a certain rpm range.  
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17 4. Far East further argued that the selected bidder, Morrico, also was not responsive  
18 because the engine on its offered forklift truck was exactly the same as Far East's. Morrico  
19 identified a Hyster H450 HD model forklift with a 230 hp Cummins diesel QSB 6.7 engine as its  
20 bid. No written evidence was presented at the Hearing by Far East to prove that their "Cummins"  
21 engine model and Morrico's Cummins diesel QSB 6.7 engine were the same. Further, PAG's  
22 attorney denied any deviation of the bid specifications by Morrico.  
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25 5. Far East requests that the Office of the Public Auditor rule that Far East is the lowest  
26 responsible bidder to Item 1.4 for a 40,000 pound fork truck. It bid \$227,830 compared to  
27 Morrico's bid of \$252,999 for Item 1.4. See Far East's Exhibit A.  
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1 Article 13 [Wage and Benefit Determination] of this Chapter, if applicable.” (Article 13 not  
2 applicable in this instance). The other eight forklifts being purchased in this Request for Bids  
3 were for much smaller sizes (five 11,000 pound and three 20,000 pound forklifts). The purchase  
4 of an over 40,000 pound rated forklift will provide the PAG with a capability of lifting very  
5 heavy items.  
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#### 7 8 IV. CONCLUSION

9 Based on the above the Hearing Officer recommends that the Public Auditor determine the  
10 following:  
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12 **1. The Appellant Far East LLC was non-responsive in its bid for the 40,000 pound**  
13 **fork truck to be purchased by PAG.** The Far East admits that while it missed the minimum  
14 specification, it missed the minimum specification by only 10 hp, a negligible amount.  
15 Nonetheless, they were below the required specification for engine horsepower. GSA was  
16 correct in finding the bid of Far East for a 40,000 pound fork truck nor the optional 44,000 pound  
17 fork truck to be non-responsive to its announced bid tender. Neither the Kalmar DCE 180-6 Far  
18 East nor the optional Kalmar DCE 200-12 forklifts offered met the minimum bid specifications  
19 and PAG is not required to purchase from Far East merely because it is cheaper than the  
20 alternative equipment offered by its competitor.  
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24 **2. Morrico, the winning bidder, met minimum bid specifications for the 40,000**  
25 **pound fork truck, and is entitled to be awarded the procurement contract.** Its proposal met  
26 the minimum required specification. It will provide a lift capacity that PAG is willing to pay for,  
27 despite its higher cost.  
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