

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



FAX

To:	David L. Manning Head of Purchasing Agency Guam Solid Waste Authority Under the Management of Federal Receiver Gershman, Brickner, & Bratton, Inc. 542 North Marine Corps Drive Tamuning, Guam 96913.	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 646-4379 x 201 or 212 (671) 649-3777	Pages:	5 (including cover page)
CC:	Kevin J. Fowler (Attorneys for Morrico Equipment, LLC)	Date:	March 20, 2017
Phone: Fax:	(671) 646-1222 (671) 646-1223	Phone: Fax:	475-0390 x. 203 472-7951

Re: OPA-PA-17-002 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

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
 Auditor
jhernandez@guamopa.com

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

March 20, 2017

David L. Manning
Head of Purchasing Agency
Guam Solid Waste Authority
Under the Management of Federal Receiver
Gershman, Brickner, & Bratton, Inc.
542 North Marine Corps Drive
Tamuning, Guam 96911

VIA FACSIMILE: (671) 649-3777

Re: Notice of Receipt of Appeal – OPA-PA-17-002

Dear Mr. Manning,

Please be advised that Morrico Equipment, LLC (“Morrico”) filed an appeal with the Office of Public Accountability (OPA) on March 17, 2017 regarding the Guam Solid Waste Authority’s response to Morrico’s protest relative to Invitation for Bid No.: GSWA006-17; a procurement solicitation for refuse collection trucks . OPA has assigned this appeal case number OPA-PA-17-002.

Immediate action is required of GSWA 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, March 27, 2017**, 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, April 3, 2017**, 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 Morrico. OPA respectfully asks that GSWA provide one original and two copies of the procurement record as the Guam Procurement Law and Regulations 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. 208, or jhernandez@guamopa.com, should you have any questions regarding this notice.

Sincerely,



Yuka Hechanova
Deputy Public Auditor

Enclosure: First two Pages of Notice of Appeal – OPA-PA-17-002

Cc: Kevin J. Fowler, Attorneys for Morrico Equipment, LLC

Kevin J. Fowler
DOOLEY ROBERTS FOWLER & VISOSKY LLP
865 South Marine Corps Drive, Suite 201
Tamuning, Guam 96913
Telephone No. (671) 646-1222
Facsimile No. (671) 646-1223
E-mail: fowler@guamlawoffice.com

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 03.17.17
TIME: 2:20 AM PM BY: JMY
FILE NO OPA-PA: 17-002

Attorneys for Appellant
Morrico Equipment, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of)
)
MORRICO EQUIPMENT, LLC,)
)
Appellant.)
_____)

**NOTICE OF PROCUREMENT
APPEAL**

Docket No. OPA-PA 17-002

Appellant Information:

Morrico Equipment, LLC ("Morrico")
197 Ypao Road
Tamuning, Guam 96931

Tel: 649-1946
Fax: 649-1947

Appeal Information:

- A) Guam Solid Waste Authority ("GSWA"), Under the Management of Federal Receiver, Gershman, Brickner & Bratton, Inc.
- B) Invitation for Bid No. GSWA006-17; a procurement solicitation for refuse collection trucks.
- C) Decision being appealed is the GSWA Denial of Procurement Protest, dated March 3, 2017.
- D) Appeal is made from a decision on protest of method, solicitation or award.
- E) Names of competing bidders:

Mid-Pac Far East ("Mid-Pac") and Far East Equipment Company ("Far East").

Form and Filing:

1. On or about February 8, 2017, the GSWA, through its receiver Gershman, Brickner & Bratton, Inc. ("Receiver"), let the subject Invitation for Bid ("IFB"), for two categories of refuse collection trucks. The IFB is attached as **Exhibit A**.

On February 22, 2017, Morrico served a protest on the GSWA because the IFB specification for cab forward refuse trucks unlawfully restricted competition. Morrico's also protested because the Public Auditor had previously upheld Morrico's appeal of the cab forward specification as contained in GSWA001-15, finding that the specification unlawfully restricted competition. The Public Auditor's decision was upheld by a December 16, 2016, final judgment of the Superior Court of Guam. Morrico's protest is attached as **Exhibit B**.

On March 3, 2017, the GSWA denied Morrico's protest. The GSWA denied the protest based on an order of the District Court of Guam in Civil Case No. 02-00022 that authorized the Receiver to re-let the IFB for refuse trucks with a cab forward specification. The District Court's order is currently on appeal to the Ninth Circuit Court of Appeals. The Receiver's protest denial letter is attached as **Exhibit C**.

2. Morrico requests that the Office of Public Auditor ("OPA") rule that the IFB specification restricting competition to only those vendors offering a cab forward model violates the Guam Procurement Code provisions governing specifications and that the refusal of the GSWA to amend the specifications to allow vendors to bid a conventional cab model was arbitrary, capricious and an abuse of discretion.

3. Morrico has attached all supporting documents as exhibits hereto.


Declaration regarding court action:

Morrigo confirms that an action in court has been commenced and that there is an appeal pending before the Ninth Circuit Court of Appeals with respect to the District Court of Guam's order authorizing the Receiver to re-let the IFB with a cab forward specification.

Dated this 17th day of March, 2017.

DOOLEY ROBERTS FOWLER & VISOSKY LLP

By:



KEVIN J. FOWLER

Attorneys for Appellant
Morrigo Equipment, LLC

Broadcast Report

Date/Time 03-20-2017 10:23:54 a.m. Transmit Header Text
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002	268	6461223	10:19:43 a.m. 03-20-2017	00:01:36	5/5	1	EC	HS	CP14400

Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	CP: Completed	TS: Terminated by system
HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TU: Terminated by user	EC: Error Correct

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GSWA Guam Solid Waste Authority
Date Received



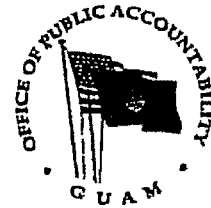
MAR 20 2017

Thank you,
 Jerrick Hernandez
 Auditor
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By: *[Signature]*

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Dooly Roberts Fowler & Visosky LLP

MAR 20 2017

10:38 AM TH

Thank you,

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Auditor

jhernandez@guamopa.com

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