



Jerrick Hernandez <jhernandez@guamopa.com>

E-FILING OPA-PA-25-008 GSA AGENCY REPORT AND GSA AGENCY STATEMENT

Darlow Graham Botha <Graham.Botha@gsadoa.guam.gov>

Tue, May 27, 2025 at 4:26 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>, "mjberman@pacificlawyers.law" <mjberman@pacificlawyers.law>

Cc: "Andriana U. Quitugua" <Andriana.u.quitugua@gsadoa.guam.gov>

Dear Mr. Hernandez:

Please find attached for electronic filing with the OPA appellee's filing of the following documents: GSA Agency Report and GSA Agency Statement. If you have any questions, please contact me at the office.

Regards,

Graham Botha

General Services Agency (GSA)/Department of Administration (DOA)

Tel: (671) 475-1702

graham.botha@gsadoa.guam.gov

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2 attachments**OPA - Far East protest GSA Agency Report.pdf**

79K

**OPA - Far East protest GSA Agency Statement.pdf**

236K

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IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

IN THE APPEAL OF:)	DOCKET NO. OPA-PA-25-008
)	
FAR EAST EQUIPMENT COMPANY,)	
LLC)	PURCHASING AGENCY
)	AGENCY STATEMENT
Appellant.)	
_____)	

COMES NOW, the General Services Agency ("GSA"), by and through its counsel and files its Agency Statement pursuant to 2 GAR § 12105(g) in response to the appeal by FAR EAST EQUIPMENT COMPANY, LLC, ("Far East") protesting the Proposal of Procurement No. GSA/IFB-017-25, ("IFB").

I. RELEVANT BACKGROUND

A. GSA SOLICITS BIDS FOR IFB GSA-017-25, ARTICULATING BOOM LIFT AND INDOOR SCISSOR LIFT (LATEST MODEL)

On January 24, 2025, General Services Agency ("GSA") issued Invitation for Bid, GSA-017-25, ARTICULATING BOOM LIFT AND INDOOR SCISSOR LIFT (LATEST MODEL), (Tab "B"). Three bidders, Morrico Equipment LLC, Far East Equipment Company LLC and International Royal, Inc., expressed interest in the IFB from January 25, 2025 to March 21, 2025, and all three submitted bids in response to the IFB. Bid Abstract, March 21, 2025. (Tab "K").

1 Prior to submission of the bids, the bidders had an opportunity to submit questions regarding the
2 IFB. GSA issued amendment I in response to these questions Procurement Record, Tab "D-E".

3 On March 21, 2025, the bids were opened in the presence of company representatives. The
4 representatives were provided a copy of the Abstract of Bids which lists the three bids submitted
5 by Morrico Equipment LLC, Far East Equipment Company LLC and International Royal, Inc.
6 The Bid Abstract is contained in the procurement record at Tab "K."

7 The Bid Analysis dated April 2, 2025, recommended that Line Item No. 1.0 and Line Item
8 No. 2 be awarded to Morrico Equipment LLC in the amount of \$204,856.00 and \$26,781.00
9 respectively as being the lowest responsive and responsible bidder. Tab "J". The Certification of
10 Completed Procurement Record is dated March 10, 2021. Tab "PR pg. 4".

11 Far East Equipment Company LLC filed a protest with GSA on April 7, 2025, which
12 resulted in a Stay of Procurement. (Tab "P"). GSA denied the protest on April 24, 2025, and there
13 was a Lift of Stay when the protest was denied by GSA. (Tab "P"). Far East Equipment Company
14 LLC filed an appeal to the OPA on May 9, 2025, and GSA filed a Stay of Procurement on May 9,
15 2025 (Tab "P").

16 II. DISCUSSION

17 A. THE MORRICO EQUIPMENT LLC BID WAS RESPONSIVE, AND THE AWARD
18 FOR ARTICULATING BOOM LIFT AND INDOOR SCISSOR LIFT (LATEST
19 MODEL) WAS PROPERLY AWARDED TO MORRICO EQUIPMENT LLC AS
20 MORRICO EQUIPMENT LLC MET THE SPECIFICATIONS IN THE IFB.

21
22 Procurement law requires that GSA award to the lowest responsive and **responsive**
23 bidders. A responsive bidder is a person who has submitted a bid which conforms in all material
24 respects to the Invitation for Bid. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2).

1 Further, any bidder's offering which does not meet the acceptability requirements shall be rejected
2 as non-responsive. 2 GAR, Div. 4, Chap. 3, §3109(n)(3)(c).

3 Three bidders submitted bids which were opened by GSA on March 21, 2025. Far East
4 Equipment Company LLC sent a letter to GSA protesting the rejection of its bid due to "no bid
5 security or insufficient bid security." In its protest, Far East Equipment Company LLC alleges that
6 they submitted a Letter of Credit within their bid proposal that covers the 15% bid bond
7 requirement. The Special Reminder to Prospective Bidders, signed by the President of Far East
8 Equipment Company LLC on February 25, 2025, indicates that there are two acceptable options
9 for the bid guarantee (15% of bid amount), and they are (a) Cashier's Certified Check or (b) Surety
10 Bond. Far East Equipment Company LLC submitted a Letter of Credit with its bid proposal, which
11 does not satisfy the requirements listed in the Special Reminder to Prospective Bidders. 5 GCA
12 §5212(a) provides that "Bid security shall be a bond provided by a surety company authorized to
13 do business in Guam, or the equivalent in cash, or otherwise supplied in a form satisfactory to the
14 government of Guam..." Additionally, 5 GCA §5212(e) Rejection of Bids for Noncompliance
15 with Bid Security Requirements, provides that "when the Invitation for Bids requires bid security,
16 noncompliance requires that the bid be rejected unless, pursuant to Policy Office regulations, it is
17 determined that the bid fails to comply in a non-substantial manner with the security
18 requirements." The Far East Equipment Company LLC submission of a Letter of Credit with its
19 bid proposal, a copy of which is attached hereto as Exhibit "A", was properly rejected by GSA
20 pursuant to 5 GCA §5212(e).

21 5 GCA §5211(g) provides that "Award. The contract shall be awarded with reasonable
22 promptness by written notice to the lowest responsible bidder whose bid meets the requirements
23 and criteria set forth in the Invitation for Bids ..." as cited in *Pacific Data Systems, Inc. vs.*

1 *General Services Agency, OPA-PA 15-012. In the Appeal of 1-A Guam WEBZ, OPA-PA 16-002*
2 also addresses the issue of bid evaluation and stated that “the invitation for bids shall set forth the
3 evaluation criteria to be used and no criteria may be used in bid evaluation that are not set forth in
4 the Invitation for bids.” 5 GCA §5211(e) and 2 GAR, Div. 4, Chap 3, §3109(n)(1).

5 Procurement law requires that GSA award to the lowest responsible and **responsive**
6 bidders. A responsive bidder is a person who has submitted a bid which conforms in all material
7 respects to the Invitation for Bid. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2).
8 GSA properly awarded Line Item No. 1 and Line Item No. 2 to MORRICO EQUIPMENT LLC as
9 the lowest responsible and responsive bidder. The bid was evaluated and awarded based on the
10 bid specifications and evaluation criteria.

11 B. THE FAR EAST EQUIPMENT COMPANY LLC BID PROTEST WAS UNTIMELY
12 AND THE OPA HAS NO JURISDICTION TO CONSIDER A PROCUREMENT
13 APPEAL.
14

15 5 GCA §5425(a) allows bidders who “may be aggrieved in connection with the method of
16 source selection, solicitation, or award of a contract” to appeal to the OPA. An aggrieved
17 individual must submit a protest within fourteen (14) days after such aggrieved individual knows
18 or should know the facts giving rise thereto. 5 GCA §5425(a). A timely protest is a jurisdictional
19 requirement of the procurement protest process in Guam procurement law. Teleguam Holdings,
20 LLC v. Guam, 2018 Guam 5, ¶20-21, DFS Guam L.P., 2020 Guam 20 ¶77, 81-87 (“a protest filed
21 more than 14 days after the disappointed offeror or bidder had notice of the grounds for the protest
22 is barred as untimely.” DFS Guam L.P., 2020 Guam 20 ¶87. In Pac. Data Sys. V. Guam Dep’t of
23 Educ., 2024 Guam 4 ¶4, the Guam Supreme Court found that without a timely protest, the OPA
24 has no jurisdiction to consider a procurement appeal.

On January 24, 2025, General Services Agency (“GSA”) issued Invitation for Bid, GSA-017-25. Fourteen (14) days after January 24, 2025 is February 7, 2025. The Special Reminder to Prospective Bidders, signed by Far East Equipment Company LLC on February 25, 2025, indicates that there are two acceptable options for the bid guarantee (15% of bid amount), and they are (a) Cashier’s Certified Check or (b) Surety Bond. Far East Equipment Company LLC acknowledged that it received the bid specifications, and again when its President signed the Special Reminder to Prospective Bidders on February 25, 2025 it was aware of the bid specifications requiring either a Cashier’s Certified Check or a Surety Bond. Far East Equipment Company LLC again had an opportunity to seek clarification as to these requirements during the question and comments phase which were due on March 5, 2025. No questions were raised by Far East Equipment Company LLC as to whether a Letter of Credit could be submitted. Far East Equipment Company LLC filed a protest with the OPA on May 9, 2025 which is untimely and deprives the OPA of jurisdiction.

14 CONCLUSION

15 GSA requests that the OPA find that Far East Equipment Company LLC's appeal is a
16 frivolous abuse of the protest and appeal process and award fees to GSA pursuant to 5 GCA
17 §5425(h)(2). GSA requests that the appeal of Far East Equipment Company LLC be dismissed,
18 and that the Public Auditor award all legal and equitable remedies that GSA may be entitled to as a
19 result.

20 **RESPECTFULLY SUBMITTED** this 27th day of May, 2025, by:

21
22
23
24
25

D. GRAHAM BOTHA, ESQ.
GSA Procurement Counsel



Bank of Guam

Headquarters • 111 Chalan Santo Papa, Hagåtña, Guam 96910

Tel: (671) 472-5300

LETTER OF CREDIT Irrevocable Standby

Date: March 18, 2025
Amount: \$35,000.00

Letter of Credit No. 01-SB-2061
Expiration Date: June 18, 2025

APPLICANT:

Far East Equipment Company, LLC
17-3311 Corsair Road Tiyan
Barrigada, Guam 96913

BENEFICIARY:

General Services Agency
2nd Floor ITC Bldg. Rm 215
Tamuning, Guam 96931

To General Services Agency:

We hereby establish our Irrevocable Standby Letter of Credit No. 01-SB-2061 in your favor for the account of Far East Equipment Company, LLC., 17-3311 Corsair Road Tiyan, Barrigada, Guam 96913 up to the aggregated amount of \$35,000.00 (Thirty-Five Thousand and no/100) available by your drafts drawn at SIGHT on Bank of Guam, 111 Chalan Santo Papa, Hagatna, Guam 96910 and accompanied by documents specified as follows:

- 1) Beneficiary's signed certificate stating that the applicant has defaulted on the terms and conditions set forth under Invitation for Bid No. GSA-017-25 for Articulating Boom Lift and Indoor Scissor Lift (Latest Model).
- 2) The original Letter of Credit and all Amendments, if any.

Partial drawings under this credit are not allowed.

We hereby agree with you that all drafts drawn under and in compliance with the terms of this credit shall be met with due honor upon presentation and delivery of documents as specified to the drawee if drawn and presented for negotiation on or before June 18, 2025.

All documents are to be marked with Bank of Guam reference no. 01-SB-2061 and are to be forwarded in one cover to Bank of Guam, Headquarters, Attn: Letters of Credit Department, 111 Chalan Santo Papa, Hagatna, Guam 96910.

..... E N D
.....

Sincerely,
BANK OF GUAM

BY 
Authorized Signer: Anjanette Gibbons - AVP LC Manager

BY 
Authorized Signer: Janine Eustaquio - VP Credits Officer

PROVISIONS APPLICABLE TO THIS CREDIT: This credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Provision) International Chamber of Commerce Publication No. 600.

EX "A" LC03 (Rev 03/2020)