



Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

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## Far East v GSA - Mtn to Dismiss OPA-PA-25-008

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

Mon, Jun 30, 2025 at 11:08 AM

To: Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;, "mjberman@pacificlawyers.law" &lt;mjberman@pacificlawyers.law&gt;

Cc: "Andriana U. Quitugua" &lt;Andriana.u.quitugua@gsadoa.guam.gov&gt;

Dear Jerrick:

Please find attached GSA's Motion to Dismiss in Far East v GSA, OPA-PA-25-008.

Regards,  
Graham

**Graham Botha**

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

Tel:(671) 475-1702

graham.botha@gsadoa.guam.gov



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**OPA - GSA Mtn to Dismiss in OPA-PA-25-008.pdf**  
277K

1 General Services Agency  
2 **D. Graham Botha Esq.**  
3 **GSA Procurement Counsel**  
4 590 S. Marine Corps. Drive  
5 ITC Bldg., Ste. 230  
6 Tamuning, Guam 96913 · USA  
7 Tel: 671-475-1702  
8 Email: graham.botha@gsadoa.guam.gov

9 Attorney for the General Services Agency

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11 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**  
12 **PROCUREMENT APPEAL**

13 IN THE APPEAL OF: ) DOCKET NO. OPA-PA-25-008

14 FAR EAST EQUIPMENT COMPANY, )

15 LLC )

16 Appellant, )

17 MOTION TO DISMISS

18 and )

19 GENERAL SERVICES AGENCY, )

20 Purchasing Agency. )

21 Comes now, the General Services Agency ("GSA"), by and through its  
22 counsel and files its Motion to Dismiss the appeal filed by appellant, Far East  
23 Equipment Company, LLC ("Far East" or "Appellant") in IFB-GSA-017-25,  
24 Articulating Boom Lift and Indoor Scissor Lift (Latest Model).

25 **I. RELEVANT BACKGROUND**

26 On January 24, 2025, General Services Agency ("GSA") issued Invitation for Bid, GSA-  
27 017-25, ARTICULATING BOOM LIFT AND INDOOR SCISSOR LIFT (LATEST MODEL),  
28 (Tab "B"). Three bidders, Morrico Equipment LLC, Far East Equipment Company LLC and

1 International Royal, Inc., expressed interest in the IFB from January 25, 2025 to March 21, 2025,  
2 and all three submitted bids in response to the IFB. Bid Abstract, March 21, 2025. (Tab "K").  
3 Prior to submission of the bids, the bidders had an opportunity to submit questions regarding the  
4 IFB. GSA issued amendment I on March 7, 2025, in response to these questions, Procurement  
5 Record, Tab "D-E". Morrico Equipment LLC submitted a surety bond with its bid. ("PR, pg. 79-  
6 80.") International Royal Inc. submitted a Bank of Guam cashiers' check. ("PR, pg. 200.") Far  
7 East Equipment Company LLC was the only bidder who failed to follow the simple instructions  
8 contained within the Special Reminder to Prospective Bidders which told bidders that they  
9 should submit either a cashier's certified check or a surety bond, and instead submitted a Bank of  
10 Guam Letter of Credit. ("PR, pg. 135-136.")

12 On March 21, 2025, the bids were opened in the presence of company representatives.  
13 The representatives were provided a copy of the Abstract of Bids which lists the three bids  
14 submitted by Morrico Equipment LLC, Far East Equipment Company LLC and International  
15 Royal, Inc. The Bid Abstract clearly indicated that Morrico Equipment LLC provided a surety  
16 bond, International Royal Inc. provided a Bank of Guam cashiers' check, and only Far East  
17 Equipment Company LLC provided a Bank of Guam Letter of Credit, which was indicated on  
18 the bid abstract in two places with a "\*", and section A, Bid Bond Submittal, was not checked  
19 for Far East Equipment Company LLC. The Bid Abstract is contained in the procurement record  
20 at Tab "K.", "PR pg. 268-269."

21 The Bid Analysis dated April 2, 2025, recommended that Line Item No. 1.0 and Line  
22 Item No. 2 be awarded to Morrico Equipment LLC in the amount of \$204,856.00 and \$26,781.00  
23 respectively as being the lowest responsive and responsible bidder. Tab "J". A Bid Status Letter  
24 was provided to Far East Equipment Company LLC on April 2, 2025, indicating that its bid was  
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1 rejected due to “no bid security or insufficient bid security.” (“PR pg. 271). The Certification of  
2 Completed Procurement Record is dated May 19, 2025. (“PR pg. 4”).

3 Far East Equipment Company LLC filed a protest with GSA on April 7, 2025, which  
4 resulted in a Stay of Procurement. (Tab “P”). This protest was filed 41 days after Far East  
5 Equipment Company LLC notarized the Special Reminder to Prospective Bidders, 31 days after  
6 Amendment 1 was issued to the bidders and GSA responded to questions from Far East  
7 Equipment Company LLC and Morrico Equipment LLC, and 17 days from the bid opening  
8 where it was clear only Far East Equipment Company LLC had failed to submit either a cashiers'  
9 check or surety bond as required by the IFB. GSA denied the protest on April 24, 2025, and  
10 there was a Lift of Stay when the protest was denied by GSA. (Tab “P”). Following the Lift of  
11 Stay, GSA made an award to Morrico Equipment LLC and issued a Purchase Order on April 30,  
12 2025. (“PR pg. 280, 290-291”). Far East Equipment Company LLC filed an appeal to the OPA  
13 on May 9, 2025, and GSA filed a Stay of Procurement on May 9, 2025 (Tab “P”).

15 **II. DISCUSSION**

16 5 GCA §5425(a) allows bidders who “may be aggrieved in connection with the method  
17 of source selection, solicitation, or award of a contract” to appeal to the OPA. An aggrieved  
18 individual must submit a protest within fourteen (14) days after such aggrieved individual knows  
19 or should know the facts giving rise thereto. 5 GCA §5425(a). A timely protest is a  
20 jurisdictional requirement of the procurement protest process in Guam procurement law.

21 Teleguam Holdings, LLC v. Guam, 2018 Guam 5, ¶20-21, DFS Guam L.P., 2020 Guam 20 ¶77,  
22 81-87 (“a protest filed more than 14 days after the disappointed offeror or bidder had notice of  
23 the grounds for the protest is barred as untimely.” DFS Guam L.P., 2020 Guam 20 ¶87. In Pac.  
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1 Data Sys. V. Guam Dep't of Educ., 2024 Guam 4 ¶4, the Guam Supreme Court found that  
2 without a timely protest, the OPA has no jurisdiction to consider a procurement appeal.

3 On January 24, 2025, General Services Agency (“GSA”) issued Invitation for Bid,  
4 GSA-017-25. Fourteen (14) days after January 24, 2025 is February 7, 2025. The Special  
5 Reminder to Prospective Bidders, signed by Far East Equipment Company LLC on  
6 February 25, 2025, indicates that there are two acceptable options for the bid guarantee  
7 (15% of bid amount), and they are (a) Cashier’s Certified Check or (b) Surety Bond. Far  
8 East Equipment Company LLC acknowledged that it received the bid specifications, and  
9 again when its President signed the Special Reminder to Prospective Bidders on February  
10 25, 2025 it was aware of the bid specifications requiring either a Cashier’s Certified Check  
11 or a Surety Bond. Far East Equipment Company LLC again had an opportunity to seek  
12 clarification as to these requirements during the question and comments phase which was  
13 due on March 5, 2025. No questions were raised by Far East Equipment Company LLC as  
14 to whether a Letter of Credit could be submitted to GSA. In this case, the protest was filed  
15 41 days after Far East Equipment Company LLC notarized the Special Reminder to  
16 Prospective Bidders; 31 days after Amendment 1 was issued to the bidders and GSA  
17 responded to questions from Far East Equipment Company LLC and Morrico Equipment  
18 LLC; and 17 days from the bid opening where it was clear **only** Far East Equipment  
19 Company LLC had failed to submit either a cashiers’ check or surety bond as required by  
20 the IFB. Far East Equipment Company LLC filed a protest with GSA on April 7, 2025  
21 which was untimely, and again with the OPA on May 9, 2025 which was untimely and  
22 deprives the OPA of jurisdiction.

23 The Protest was submitted well beyond the 14-day time period when Far  
24 East Equipment Company LLC first knew or should have known of the facts which  
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1 supported its complaint. 5 GCA § 5425(a) and 2 GAR, Div. 4 § 9101(c)(1); DFS Guam  
2 L.P., 2020 Guam 20 at ¶95-96. Far East Equipment Company LLC is not entitled to any  
3 relief, and it is not entitled to have its complaints heard on the merits.

4 In the alternative, should there be a finding that the Far East Equipment  
5 Company LLC protest was filed in a timely manner, it would still not prevail. GSA is  
6 required by Guam procurement to award to the lowest responsible and **responsive**  
7 bidders. A responsive bidder is a person who has submitted a bid which conforms in all  
8 material respects to the Invitation for Bid. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3,  
9 §3109(n)(2). Further, any bidder's offering which does not meet the acceptability  
10 requirements shall be rejected as non-responsive. 2 GAR, Div. 4, Chap. 3,  
11 §3109(n)(3)(c).

12 Three bidders submitted bids which were opened by GSA on March 21, 2025.  
13 The Special Reminder to Prospective Bidders, signed by the President of Far East  
14 Equipment Company LLC on February 25, 2025, indicates that there are two acceptable  
15 options for the bid guarantee (15% of bid amount), and they are (a) Cashier's Certified  
16 Check or (b) Surety Bond. Far East Equipment Company LLC submitted a Letter of  
17 Credit with its bid proposal, which does not satisfy the requirements listed in the Special  
18 Reminder to Prospective Bidders. 5 GCA §5212(a) provides that "Bid security shall be a  
19 bond provided by a surety company authorized to do business in Guam, or the  
20 equivalent in cash, or otherwise supplied in a form satisfactory to the government of  
21 Guam...." Additionally, 5 GCA §5212(e) Rejection of Bids for Noncompliance with Bid  
22 Security Requirements, provides that "when the Invitation for Bids requires bid security,  
23 noncompliance requires that the bid be rejected unless, pursuant to Policy Office  
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regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements." The Far East Equipment Company LLC submission of a Letter of Credit with its bid proposal, a copy of which is attached hereto as Exhibit "A", was properly rejected by GSA pursuant to 5 GCA §5212(e).

5 GCA §5211(g) provides that "Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids ..." as cited in *Pacific Data Systems, Inc. vs. General Services Agency*, OPA-PA 15-012. In the Appeal of 1-A Guam WEBZ, OPA-PA 16-002 also addresses the issue of bid evaluation and stated that "the invitation for bids shall set forth the evaluation criteria to be used and no criteria may be used in bid evaluation that are not set forth in the Invitation for bids." 5 GCA §5211(e) and 2 GAR, Div. 4, Chap 3, §3109(n)(1).

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

### III. CONCLUSION

GSA requests that the OPA find that Far East Equipment Company LLC's appeal is a frivolous abuse of the protest and appeal process, and award fees to GSA pursuant to 5 GCA §5425(h)(2). GSA further requests that the OPA find that the appeal of Far

1 East Equipment Company LLC is untimely and therefore should be dismissed, and that  
2 the Public Auditor award all legal and equitable remedies that GSA may be entitled to  
3 as a result.

4 Dated this 30<sup>th</sup> day of June, 2025.

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6  
7 By:

GENERAL SERVICES AGENCY

  
D. GRAHAM BOTHA

GSA Procurement Counsel

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