

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



FAX

To:	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727 Email: Claudia.Acfalle@gsadoa.guam.gov	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	11 (including cover page)
CC:	Mr. Joshua D. Walsh, Esq. Mr. Edwin J. Torres, Esq. Attorney for Appellant Guahan Ventures Inc. dba Turfco Razano Walsh & Torres, P.C. 139 Murrary Blvd. Hagåtña, Guam 96910 Phone: (671) 989-3009 Email: jdwalsh@rwtguam.com ; etorres@rwtguam.com	Date:	July 12, 2021
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-21-003 Notice of Receipt of Appeal

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com



OFFICE OF PUBLIC ACCOUNTABILITY

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

Phone: (671) 475-0390 / FAX: (671) 472-7951

July 12, 2021

Ms. Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
Department of Administration
148 Route 1 Marine Drive
Piti, Guam 96915

VIA FACSIMILE: (671) 475-1727

Re: Notice of Receipt of Appeal – OPA-PA-21-003

Dear Ms. Acfalle,

Please be advised that Guahan Ventures Inc. dba Turfco (hereinafter referred to as “Turfco” filed an appeal with the Office of Public Accountability (OPA) on July 9, 2021, regarding the General Services Agency’s response to Turfco’s protest of the procurement award for Golf Carts, Requisition No. Q210280170. OPA has assigned this appeal case number OPA-PA-21-003.

Immediate action is required of GSA 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 first eight pages of 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), the submission of 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 is required no later than **Thursday, July 19, 2021**, five work days following this Notice of Receipt of Appeal. We also request 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 **Tuesday, July 27, 2021**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and one copy to OPA (electronic filings will be acceptable), and serve a copy to Turfco. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA

respectfully asks that GSA provide one original and one electronic file of the said record, which will be distributed as follows: Copy-1: Master File; and Copy-2: Public Auditor and/or Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 204 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Eight Pages of the Notice of Appeal – OPA-PA-21-003

Cc: Joshua D. Walsh, Esq. and Edwin J. Torres, Attorneys for Appellant Turfco

ORIGINAL

RAZZANO WALSH & TORRES, P.C.

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**PROCUREMENT APPEAL OF DENIAL OF PROCUREMENT PROTEST
IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

PART I.

In the Appeal of

Guahan Ventures Inc. dba Turfco,

Appellant.

DOCKET NO. OPA-PA- 21-003

NOTICE OF APPEAL

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 7/9/2021

TIME: 2:50 AM PM BY: CJY

FILE NO OPA-PA: 21-003

PART II: APPELLANT INFORMATION

Appellant's Name	Guahan Ventures Inc. dba Turfco
Appellant's Mailing Address	809 Chalan Pasaheru Unit 1 Tamuning, Guam 96913
Appellant's Business Address	809 Chalan Pasaheru Unit 1 Tamuning, Guam 96913
Appellant Representative's Direct Email Address	info@turfco Guam.com

Appellant is represented by legal counsel in this appeal. For purposes of this appeal, please direct correspondence to Guahan Ventures Inc. dba Turfco's ("Turfco") counsels, Joshua D. Walsh and Edwin J. Torres of Razzano Walsh & Torres, P.C.

Counsel's Mailing Address	139 Murray Blvd. Ste. 100, Hagatna, Guam 96910
Counsel's Telephone	671-989-3009
Counsel's Facsimile	671-989-8750
Counsel's Direct Email Address	jdwalsh@rwtguam.com etorres@rwtguam.com

PART III: APPEAL INFORMATION

- A. Purchasing Agency: General Services Agency.
- B. Solicitation Number: Request for Quotation (REQ) 21002179.
- C. The Decision being appealed was provided to the Appellant on June 25, 2021. The Decision was made by the Chief Procurement Officer, Claudia S. Acfalle.
- D. This Appeal is made from the Denial of Procurement Protest provided to Turfco on June 25, 2021.
- E. The names of competing offerors known to Appellant are:
 - 1. Guam Auto Spot ("Auto Spot"); and
 - 2. Royal Pacific Motors ("RPM").

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PART IV: STATEMENT OF GROUNDS FOR APPEAL

A. THE GROUNDS FOR APPEAL

1. Relevant Procedural and Factual History

The General Services Agency (“GSA”) issued a Request for Quote for Requisition No. Q210280170 on June 14, 2021, seeking golf carts.¹ Q210280170 stated that a quote was required no later than June 17, 2021, before close of business at 5pm.² There was no delivery date originally indicated in the quotation. On June 14, 2021, GSA informed bidders that the “preferred ETA is 30 days from the date of purchase order award.”³ Other offerors prepared their bids later that day, and the next day Turfco prepared its quote for golf carts with a delivery date of 30 days out from a firm order.⁴ On June 16, 2021, at 5:43pm — after working hours and a day before the deadline for submission of quotes — GSA sent an email to offerors stating “See attached Request for Quote....Please note that this is an ‘Emergency Procurement’ and Delivery Require is ‘IMMEDIATE’” Which was entered on the last page of the RFQ Request. Thank you for your attention please acknowledge receipt of this email.” (internal quotations and ellipses in original).⁵ The RFQ was changed to RFQ21002179.

¹ The request for quotation is attached to this Notice of Appeal as **Attachment A**.

² A copy of the email sent to Turfco indicating the due date is attached to this Notice of Appeal as **Attachment B**.

³ A copy of the email sent by Krystel Elaine F. Tahimik, Buyer I of GSA, to Turfco stating the delivery timeframe is 30 days from the date of purchase order award is attached as **Attachment C**.

⁴ A copy of Turfco’s submission is attached to this Appeal as **Attachment D**.

⁵ A copy of the email sent to Turfco changing the delivery date is attached to this Notice of Appeal as **Attachment E**.

On June 22, 2021, Turfco requested information as to the award of RFQ21002179. The Bid Abstract for this requisition was sent to Turfco on June 24, 2021.⁶ Although Turfco was the lowest responsive bidder, the Abstract declared instead that Guam Auto Spot was selected for Award.⁷ On June 24, 2021, GSA informed Turfco that Turfco was not selected because Guam Auto Spot could deliver the golf carts “immediately” — a specification change that was added *the day before* the quote was due and *after* all offerors had prepared their bids.⁸ On June 24, 2021, Turfco protested GSA’s award to Guam Auto Spot based upon the improper late addition of the “immediate delivery” specification that was not contained in the original bid requirements, and that was only added after-hours in the waning moments of the bid submission window, after all offerors had already prepared their bids.⁹ GSA denied the protest on June 25, 2021.¹⁰ This Notice of Appeal followed.

2. GSA’s substantive Change to the Request for Quotation a Day Before the Bid Quotation, and after all quotes had been submitted, Violates Guam Procurement Law.

Q210280170’s change to RFQ21002179 requiring “immediate delivery” is a violation of Guam law. It was unfair for GSA to change the required specification for delivery in the evening hours a day before the bid was due, and to make that specification after all parties had prepared their bids. Guam procurement law exists

⁶ A copy of the email sent to Turfco with the bid abstract is attached as **Attachment F**.

⁷ A copy of the bid abstract is attached as **Attachment G**.

⁸ A copy of the email explanation is attached as **Attachment H**.

⁹ A copy of Turfco’s agency level protest is attached as **Attachment I**.

¹⁰ A copy of the denial is attached as **Attachment J**.

to, *inter alia*, “provide for increased public confidence in the procedures followed in public procurement” as well as to “ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory” 5 G.C.A. § 5001. This is in keeping with the command of 5 G.C.A. § 5625 that “Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the territorial procurement organization.” Altering bid specifications just hours before the end of the bid invitation period, and *after* confirming a 30 day delivery period, and *after* the parties all prepared their bids, calls into serious question the fairness and propriety of the procurement conducted by GSA here. More, altering bid delivery specifications *after* confirming another bid delivery specification calls into question the integrity of this procurement, and suggests improper conduct designed to drive this solicitation to one particular offeror.¹¹ Such inequitable conduct by the procuring agency results in a decrease in public confidence in the procurement procedures of the Territory.

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¹¹ The bidder AutoSpot had, curiously, prepared a bid offering with an immediate delivery specification *before* the immediate delivery specification was implemented by the agency in the waning hours of the bid submission period. Again, this immediate delivery specification came just two days after GSA had confirmed to offerors that a 30-day delivery period was specified. Appellant Turfco reserves all rights to supplement its appeal as needed based upon what the procurement record reveals about the justification for the late specification change, and to seek discovery on that matter if so warranted.

3. GSA's Change to "Immediate Delivery" Amounts to a Sole Source Procurement in Violation of Guam Law.

GSA's after business hours change to the specifications appear to be an attempt to shoehorn the procurement into a sole source procurement, and guaranty an award to offeror Autospot. Auto Spot prepared its price quotation of \$73,970.00 on June 14, 2021. Turfco, the appellant here, prepared its price quotation of \$53,150 on June 15, 2021. After the close of business on the following day, GSA changed the specifications to require an offeror provide the solicited items with "immediate delivery." This change was ordered despite the fact that just two days earlier a clarification was provided to bidders explaining that delivery should occur in 30 days. At the time GSA issued this specification calling for "immediate delivery," it appears that all the bids under this solicitation were already prepared, with one party — AutoSpot — declaring that immediate delivery was possible despite that not being a bid requirement. GSA then changed the bid specifications to match Autospot's immediate delivery option, and to prevent an award to Turfco who had a much lower price and was responsive to all specifications in existence at the time its bid was submitted. This later alteration of the specifications constituted an attempt to drive the territory toward using Autospot as the sole source for the golf carts sought by the GSA. This violates Guam procurement law.

B. RULING Requested

Turfco respectfully requests that the Office of Public Accountability Order the following:

- (1) That GSA rescind the Notice of Award to AutoSpot issued in this

procurement, and instead issue an Award to Turfco as the lowest priced responsible and responsive offeror under this procurement;

- (2) That the existence of the automatic stay in this matter be confirmed, and that GSA be ordered to take no further action in this procurement until the matter has been completely resolved;
- (3) That Turfco be awarded its fees and costs in this matter to the extent allowed by law; and
- (4) Such further relief as the OPA deems appropriate.

C. SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS

Submitted with this appeal are the following supporting exhibits, evidence, and documents:

- (1) The Request for Quote for Requisition No. Q210280170 on June 14, 2021, seeking golf carts is attached as **Attachment A**.
- (2) A copy of the email sent to Turfco indicating the due date is attached as **Attachment B**.
- (3) A copy of the email sent by Krystel Elaine F. Tahimik, Buyer I of GSA, to Turfco stating the delivery timeframe is 30 days from the date of purchase order award is attached as **Attachment C**.
- (4) A copy of Turfco's quote for golf carts submission is attached as **Attachment D**.
- (5) A copy of the email sent to Turfco changing the delivery date is attached as **Attachment E**.
- (6) A copy of the email sent to Turfco with the bid abstract is attached as **Attachment F**.
- (7) A copy of the bid abstract is attached as **Attachment G**.
- (8) A copy of the email explanation is attached as **Attachment H**.
- (9) A copy of Turfco's agency level protest is attached as **Attachment I**.
- (10) A copy of the denial of the protest is attached as **Attachment J**.

Turfc0 anticipates providing further documentation to substantiate its claims as GSA submits the full contracting procurement record to the OPA, and allows Turfc0 and its counsel to review the procurement record in full.

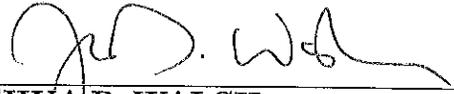
PART V: DECLARATION RE COURT ACTION

Pursuant to 5 G.C.A. Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court. The undersigned party does hereby confirm that to the best of his knowledge, no case or action concerning the subject of this Appeal has been commenced in court. The undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Respectfully submitted this 9th day of July, 2021.

RAZZANO WALSH & TORRES, P.C.

By: _____


JOSHUA D. WALSH
EDWIN J. TORRES
Attorneys for Appellant
Guahan Ventures Inc. dba Turfc0



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-21-003 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Mon, Jul 12, 2021 at 8:56 AM

To: Claudia Acfalle <Claudia.Acfalle@gsadoa.guam.gov>, "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Edwin J. Torres" <etorres@rwtguam.com>

Cc: Robert Kono <robert.kono@gsa.guam.gov>

Hafa Adai,

Please see attached Notice of Receipt of Appeal for OPA-PA-21-003. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA

Auditor

Office of Public Accountability – Guam

www.opaguam.org

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