



Jerrick Hernandez <jhernandez@guamopa.com>

In Appeal of JJ Global Services - Appeal Case No. OPA-PA-21-013

Rebecca Wrightson <rw@cmlaw.us>

Wed, Jan 12, 2022 at 12:37 PM

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Dear Mr. Hernandez:

Pursuant to the Letter dated October 28, 2021 re: Notice of Receipt of Appeal – OPA-PA-21-013, please find attached the following document for filing in the above-referenced matter:

1. Purchasing Agency's Reply in Support of Its [Unopposed] Motion to Vacate Hearing Because Neither Party Filed a Written Request as Mandated by 2 GAR 4 §12108 (a) and Decide Appeal on the Record.

Thanks,
~ Rebecca

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2022.01-12 - GCC's Reply re Motion to Vacate Hearing and Decide Appeal on Record.signed final.pdf
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**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

In the Matter of)	Appeal No. OPA-PA-21-013
)	
JJ Global Services,)	
)	PURCHASING AGENCY'S REPLY IN
Appellant,)	SUPPORT OF ITS [UNOPPOSED] MOTION
)	TO VACATE HEARING BECAUSE NEITHER
and)	PARTY FILED A WRITTEN REQUEST AS
)	MANDATED BY 2 GAR 4 § 12108(a) AND
Guam Community College)	DECIDE APPEAL ON THE RECORD
)	
Purchasing Agency.)	

Purchasing Agency Guam Community College (“GCC”) submits this Reply in support of its “Motion to Vacate Hearing Because Neither Party Filed a Written Request as Mandated by 2 GAR 4 § 12108(a) and Decide Appeal on the Record” (“Motion”) filed December 29, 2021, in accordance with the deadline set by the Scheduling Order issued December 2 by the Hearing Officer. Appellant JJ Global Services (“JJ Global”) did not file an Opposition to the Motion by the January 5, 2022 deadline set forth in the Scheduling Order. The Scheduling Order also set January 12 as the deadline for filing a “Reply to Opposition.” (*See* Sched. Order at 2.) Because JJ Global did not file an Opposition, GCC submits this Reply to, inter alia, clearly note for the record that its Motion has gone unopposed by JJ Global, who apparently consents to vacating the formal hearing and deciding this Appeal on the record.

In addition to it being unopposed, GCC's Motion should be well-taken and granted. As explained in the Motion (*see* Mot. at 3-5), the Procurement Regulations governing the instant Appeal mandate that a party must timely file a written request for a hearing on this Appeal or else the right to a hearing is waived and the matter must be decided on the record without a hearing. *See* 2 GAR 4 § 12108(a) (mandating that in "Appeals of protests or contract disputes, the parties shall either request a hearing in writing or waive their right to a hearing and submit the case on the record without a hearing" and that a "[r]equest for a hearing shall be made prior to the expiration of the time period allowed for filing comments on the agency report"). Here, the Public Auditor must vacate the hearing on this Appeal because neither party filed a written request for a hearing "prior to expiration of the time period allowed for filing comments on the agency report," 2 GAR 4 § 12108(a), which was November 29, 2021. (*See* Mot. at 2-5.)

Furthermore, as explained in GCC's Motion (*see* Mot. at 6-8), if this Appeal is not dismissed for lack of jurisdiction (which it should be), the only questions to be addressed are matters of law that easily can and should be decided on the record. And JJ Global's Appeal unequivocally lacks merit. Most notably, JJ Global fails to present any laws that GCC violated by cancelling the purchase order (*see* Mot. at 6-8) — which reinforces that JJ Global's Protest is actually a contract dispute that must first be resolved pursuant to the procedure set forth in 5 GCA § 5427 and its corresponding regulation 2 GAR 4 § 9103, a procedure that JJ Global never commenced, let alone exhausted.

CONCLUSION

For the foregoing reasons and those articulated in GCC's Motion to Vacate Hearing Because Neither Party Filed a Written Request as Mandated by 2 GAR 4 § 12108(a) and Decide Appeal on the Record — which JJ Global did not oppose — GCC submits that if the Public Auditor does not dismiss this Appeal for lack of jurisdiction (which he should), he must vacate the hearing scheduled for the instant Appeal because no party filed a written request for a hearing as mandated by 2 GAR 4 § 12108(a) and this Appeal must be decided on the record. And there is no question that this Appeal easily can and should be decided on the record, which unequivocally shows that JJ Global's Appeal lacks merit.

GCC proposes that the Hearing Officer and the Parties utilize the Zoom motion hearing scheduled for January 13, 2022 at 10:00 a.m. to discuss the procedure that will be used for deciding this Appeal on the record.

Respectfully submitted January 12, 2022.

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Guam Community College

By: 
REBECCA J. WRIGHTSON