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OPA-PA-23-004, In the Matter of the Appeal of Dooik Eng, Co., Ltd.

Camarine Hopkins <camarine@camachotaitano.law>

Fri, Nov 17, 2023 at 4:14 PM

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Hafa Adai Jerrick,

Camacho & Taitano LLP through Shannon Taitano, Esq., hereby submits this email filing regarding the above subject procurement appeal. This email consists of two (2) documents, as follows:

- Opposition to Motion for Confirmation of Substantial Interest (**4 pages**)
- Opposition to Motion to Dismiss (**6 pages**)

Please let me know if you have any questions. Enjoy the rest of your day.

Thank you,
Camarine

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2 attachments

Opposition (Substantial Interest).pdf
127K

Opposition (Motion to Dismiss).pdf
130K

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7 **THE OFFICE OF PUBLIC ACCOUNTABILITY**

8 **IN THE MATTER OF THE APPEAL OF**

) Docket No. OPA-PA-23-004

9)
10)
11 **DOOIK ENG CO., LTD.,**

) **OPPOSITION TO MOTION FOR**
) **CONFIRMATION OF SUBSTANTIAL**
) **INTEREST**

12) Appellant.
13)

14 Dooik Eng. Co., Ltd. (Dooik) has an interest in this appeal being resolved as quickly
15 as possible and appreciates the aggressive timelines that the Public Auditor has set.
16 This matter will be heard on the merits in approximately one month. Guam Power
17 Authority (“GPA”) has failed to establish that the award of the contract without delay
18 is necessary to protect substantial interests of Guam. Dooik opposes GPA’s motion for
19 confirmation of substantial interest and incorporates the arguments that Dooik
20 submitted in its Protest of Substantial Interest Determination filed on November 15,
21 2023.
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1 **I. BACKGROUND**

2 On September 18, 2023, the GPA imposed a stay of procurement due to this
3 appeal. The stay was imposed after evaluations of technical proposals had been
4 completed and before bid prices were opened. On November 13, 2023, GPA submitted
5 a written substantial interest determination without the Attorney General’s (“AG”)
6 concurrence by way of a Motion to Confirm the Determination.
7

8 **II. STANDARD OF REVIEW**

9 The Public Auditor’s statutory authority to confirm GPA’s Declaration of
10 Substantial Interest mandates that the Public Auditor conduct such review *de novo*. *In*
11 *the Appeal of Guam Education Financing Foundation, Inc.*, OPA Appeal No. OPA-PA-
12 09-007 (2009) and 5 GCA § 5425(g)(3) and § 5703.
13

14 **III. ARGUMENT**

- 15 1. The Public Auditor should not consider GPA’s substantial interest
16 determination until GPA has obtained all statutorily required approvals.

17 As a threshold matter, GPA has not obtained all statutorily required approvals.
18 The GPA General Manager signed the written determination of substantial interest, but
19 it does not appear there was any consultation or written concurrence from the AG.
20 Thus, the Public Auditor should deny the request on that basis alone.

- 21 2. GPA has not met all necessary requirements to establish a substantial
22 government interest.

23 A determination that the substantial interest is merely involved is not sufficient.
24 *In the Appeal of Guam Education Financing Foundation, Inc.*, OPA Appeal No. OPA-
25 PA-09-007 (2009) *citing Carl Corporation v. State Department of Education et. al.*, 946
26

1 P.2d 1, 22 (Hawaii, 1997). Instead, a substantial interest determination must
2 specifically identify the government interest, and articulate why it is necessary to
3 protect those interests, and the contract be awarded without delay. *Id.* Further, the
4 Purchasing Agency must sufficiently establish necessity to avoid the automatic stay of
5 actions continuing the solicitation or award of the contract. *In the Appeal of Guam*
6 *Education Financing Foundation, Inc. citing Guam Imaging Consultants, Inc., and*
7 *RADS, v. Guam Memorial Hospital Authority and Guam Radiology Consultants, Inc.,*
8 *2004 Guam 15, ¶ 16 and ¶ 41 (Supreme Court of Guam).* As set forth below, GPA has
9 not met these requirements.
10

11 GPA has not identified the government interest that justifies lifting the stay in
12 *this* procurement. We are all aware of GPA’s power generation and capacity challenges
13 with the ongoing load shedding. No one is pro-load-shedding. However, as GPA points
14 out, it does not expect its capacity issues to be completely resolved until 2026. If the
15 Public Auditor accepts GPA’s argument, then a substantial interest exists in every
16 single GPA procurement that could potentially have an impact on GPA’s operations
17 and no protestor will be afforded an opportunity to meaningful review of their matter.
18

19 GPA does not contend that the immediate award of this contract will end load
20 shedding. Instead, GPA relies on the general state of operations and its inability to
21 generate sufficient power capacity. While it is true that GPA requires additional
22 measures to supply power to its customers, it has not demonstrated that moving
23 forward immediately with procuring the performance management contract (PMC) for
24 the Yigo diesel generators will generate more power and reduce the possibility of load-
25
26

1 shedding. GPA has only stated that managing the Yigo diesel generators without a
2 PMC has been challenging. That is not sufficient to meet GPA's burden.

3 Furthermore, GPA has known since 2020 that it had to procure a PMC for the Yigo
4 diesel generators when it issued the previous IFB. This year GPA determined in a
5 January 9, 2023 memo that the PMC expired in January 2021 and "[t]he availability
6 and reliability of the units have slowly declined over the last 2 years indicating that
7 more manpower and skilled resources are needed to improve operations of the Yigo
8 diesel units." See Procurement Record Binder 11, Document No. 6953. The situation
9 with the Yigo diesel generators has been an ongoing problem that GPA delayed
10 addressing. GPA should not be allowed to rely on its inaction as a justification to deny
11 Dooik a meaningful review of his protest.
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14 **CONCLUSION**

15 For these reasons, Dooik submits this opposition to the substantial interest
16 determination and requests that the Public Auditor deny the motion and not confirm
17 the substantial interest.

18 Dated: November 17, 2023.

19
20 **CAMACHO & TAITANO LLP**
21 Attorneys for Appellant

22 By: 
23 **SHANNON TAITANO**