

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



# FAX

<b>To:</b>	<b>Michael Borja</b> <b>Administrative Director</b> Chamorro Land Trust Commission P.O. Box 2950 Hagatna, Guam 96932 Phone: (671) 649-5263 Fax: (671) 649-5383	<b>From:</b>	<b>Doris Flores Brooks</b> <b>Guam Public Auditor</b> Office of Public Accountability
	<b>Jay Rojas</b> <b>Administrator</b> Guam Economic Development Authority 590 South Marine Corps Drive Tamuning, Guam, 96913 Phone: (671) 647-4332 Fax: (671) 649-4146	<b>Pages:</b>	10 (including cover page)
<b>CC:</b>	<b>Jacqueline Taitano Terlaje.</b> <b>Attorney for Appellant Purestone, LLC</b> 284 West Chalan Santo Papa Hagatna, Guam 96910 Phone: (671) 648-9001 Fax: (671) 648-9002	<b>Date:</b>	July 14, 2016
		<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 208 (671) 472-7951

**Re:** OPA-PA-16-009 Notice of Receipt of Appeal

For Review

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Thank you,  
 Jerrick Hernandez, Auditor  
[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)



OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

July 14, 2016

Michael Borja  
Administrative Director  
Chamorro Land Trust Commission  
P.O. Box 2950  
Hagatna, Guam 96932  
**VIA FACSIMILE: (671) 649-5383**

Jay Rojas  
Administrator  
Guam Economic Development Authority  
590 South Marine Corps Drive  
Tamuning, Guam 96913  
**VIA FACSIMILE: (671) 649-4146**

Re: Notice of Receipt of Appeal – OPA-PA-16-009

Dear Mr. Borja and Mr. Rojas,

Please be advised that Purestone, LLC filed an appeal with the Office of Public Accountability (OPA) on July 13, 2016 regarding the Request for Proposal No.: RFP-14-002, Lajuna Point Residential Community. OPA has assigned this appeal case number OPA-PA-16-009.

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](http://www.opaguam.org). 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), please submit 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, to OPA by **Wednesday, July 20, 2016**, five work days following receipt of this notice of appeal; and 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 **Wednesday, July 27, 2016**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to Purestone, LLC. OPA respectfully asks that CLTC/GEDA provide one original and two copies of the procurement record as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208 or [jhernandez@guamopa.com](mailto:jhernandez@guamopa.com), or Yuka Hechanova at ext. 210 or [yhechanova@guamopa.com](mailto:yhechanova@guamopa.com), should you have any questions regarding this notice.

Sincerely,



Yuka Hechanova CPA, CIA, CGFM, CGAP, CGMA  
Deputy Public Auditor

Enclosure: Notice of Appeal – OPA-PA-16-009

CC: Jacqueline Taitano Terlaje, Attorney for Purestone, LLC

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

Jacqueline Taitano Terlaje, Esq.  
**LAW OFFICE OF JACQUELINE TAITANO TERLAJE, P.C.**  
284 W Chalan Santo Papa  
Hagåtña, Guam 96910  
Telephone 671.648.9001  
Facsimile 671.648.9002  
Email: info@terlajelaw.com

DATE: 07.13.16  
TIME: 2:45  AM  PM BY: JM  
FILE NO OPA-PA: 16-009

Attorney for *Appellant*  
*Purestone, LLC*

**BEFORE THE PUBLIC AUDITOR  
PROCUREMENT APPEALS  
TERRITORY OF GUAM**

IN THE APPEAL OF ) APPEAL NO. OPA-PA-16- 009  
)  
)  
)  
)  
)  
PURESTONE, LLC., )  
)  
Appellant. )  
)

**NOTICE OF APPEAL**

**PART II Appellant Information**

Name: Purestone, LLC  
Mailing Address: PMB 1001 535 Chalan Pale Ramon Haya, Yigo, Guam 96929  
Business Address: PMB 1001 535 Chalan Pale Ramon Haya, Yigo, Guam 96929  
Daytime Contact: Samantha Stern, [sstern@lattestoneholdings.com](mailto:sstern@lattestoneholdings.com)  
(671) 929-8837

**PART III Appeal Information**

A) Purchasing Agency: Guam Economic Development Authority on behalf of the Chamorro Land Trust Commission

**ORIGINAL**

1 B) Number/Description of Procurement:

2 **Guam Economic Development Authority**  
3 **RFP-14-002 Lajuna Point Residential Community, Yigo Guam**

4 Decision being appealed was dated June 28, 2016, by Deputy Administrator, Mana Silva Taijeron,  
5 GEDA, in accordance with Chamorro Land Trust Commission Resolution 2016-05, and received by  
Appellant on June 28, 2016.

6 C) Appeal is made from:

7 *(Please select one and attach a copy of the Decision to this form)*

8  Decision on Protest of Method, Solicitation or Award

9  Decision on Debarment or Suspension

10  Decision on Contract or Breach of Contract Controversy

11 (Excluding claims of money owed to or by the government)

12  Determination on Award not Stayed Pending Protest or Appeal

13 (Agency decision that award pending protest or appeal was necessary to protect the  
14 substantial interests of the government of Guam)

15 E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

16 Lajuna Point JV, 300 Chalan Padiron Haya Rte. 15, Yigo, Guam 96929

17 Authorized Representative: Stevyn J. Radonich

18 [steve@smithbridge.com.gu](mailto:steve@smithbridge.com.gu)

19 (671) 653-5036

20 *\* consortium of Hawaiian Rock Products Corporation, Perez-AOG LLC (dba as Perez Bros. and  
21 Smithbridge Guam, Inc., as identified in Lajuna Point JV Proposal dated January 21, 2014*

22 **PART IV Form and Filing**

23 **A. Grounds for Appeal**

24 This Appeal arises out of the decision on Protest of the Method, Solicitation and Award of RFP-14-  
25 002 related to the Development Agreement for Lajuna Point.

26 On June 1, GEDA issued its Notice of Cancellation via email; attached hereto as EXHIBIT 1.

27 On June 2, 2016, Appellant Purestone, LLC. lodged its protest (hereinafter "Protest"), via facsimile  
28 transmission, attached hereto as EXHIBIT 2.

1 On June 28, 2016, GEDA issued a determination and response to the Protest, attached hereto as  
2 EXHIBIT 3, denying the Protest on all grounds. Appellant Purestone appeals the GEDA Determination  
3 pursuant to Title 5 Guam Code Annotated, §5425(a). Appellant Purestone, as an actual bidder, aggrieved by  
4 the Determination of the award of RFP-14-002 relating to the Development Agreement, specifically appeals  
5 to the OPA on the following grounds:

6 (i) GEDA and CLTC’s determination that Guam Public Law P.L. 33-95 (codified as §§  
7 75122, 75123, 75124 and 75107(g) of Chapter 75 of Title 21 Guam Code Annotated  
8 (GCA) mandates the termination of RFP-14-002 was erroneous, as evidenced by the  
9 following:

10 a. RFP-14-002 does not require a commercial lease to comply with the  
11 provisions of the procurement. The CLTC Resolution No. 2016-005  
12 that Public Law 33-95 nullified RFP14-002 was erroneous. CLTC  
13 Resolution No. 2016-005 sets forth the basis of the Notice finding that  
14 the CLTC **“[C]oncurs that Public Law 33-95 nullifies all**  
15 **solicitations or proposals for commercial activity on CLTC land**  
16 **prior to the enactment of said law.”** (emphasis added). Specifically,  
17 the CLTC cites P.L. 33-95 added §75122(b)(6) to Chapter 75 of Title 21,  
18 Guam Code Annotated, which provides:

19 Any solicitation for interest or proposals, prior to the enactment of  
20 this Act, **for commercial activity on CLTC land with the intent**  
21 **of entering into a commercial lease shall be null and void**  
22 (emphasis added.)

23 b. RFP14-002 Section 2.0 provides – CLTC via GEDA “to negotiate a  
24 development agreement for the Property [Lot 7163-R1] that allows a  
25 prospective developer to prepare the site for residential development  
26 using the proceeds of coral extraction to off-set master planning, site  
27 development and infrastructure costs.” Section 2.0 RFP14-002 Project  
28 Overview.

- 1 c. The proposed Agreement for Infrastructure Development and Mineral  
2 Extraction, attached as EXHIBIT 4, sets forth terms for licensing  
3 provisions (*See* Section Two) (hereinafter “Development Agreement”)  
4 and does not require occupancy or leasing of the premises.
- 5 d. CLTC in substantially similar circumstances have consistently entered  
6 into license agreements, as opposed to lease agreements. *See* attached  
7 licensing agreements as EXHIBIT 5 (Raceway Racing Federation License  
8 Agreement) and EXHIBIT 6 (Hawaiian Rock Products License  
9 Agreement).

10 (ii) GEDA and CLTC violated Guam Procurement Law in the cancellation of the  
11 procurement without abiding by the mandatory provisions of 5 GCA § 5225 and 2  
12 GAR Div. 4 § 3115(d)(2); it is not in the best interests of Guam to cancel RFP-14-  
13 002 for the following reasons:

- 14 a. The Development Agreement increases revenue for CLTC from commercial  
15 activity from the 2014 value of \$750,505.47 to **a minimum amount of**  
16 **\$2,550,505.47, which is a 42% increase of annual revenue to the CLTC;**
- 17 b. The primary purpose of RFP-14-002 and the execution of the Development  
18 Agreement is to prepare the land for residential development (proposed as a  
19 terraced or benched layout similar to Barrigada Heights), and to provide the  
20 necessary revenue for the CLTC to survey the property in anticipation of the  
21 construction of no less than three hundred seventy-four quarter acre lots for  
22 the development of Lajuna Point Residential Community. Importantly,  
23 CLTC currently has at least **8,000** resident applicants anticipating the  
24 development of housing, and CLTC lacks the necessary financial resources  
25 for the infrastructure and site preparation for a residential community. The  
26 revenue acquired through RFP-14-002 also anticipates the use of funding for  
27 the survey of other CLTC properties.

- 1 c. RFP-14-002 increases the land value, and thus, the total value of assets held  
2 by the CLTC.
- 3 d. RFP-14-002 will not contribute to Guam's debt per capita because no  
4 funding would be provided by the Government of Guam or the CLTC for  
5 the development of affordable housing; nor does RFP-14-002 utilize any  
6 qualifying certificates, or any other government subsidy.
- 7 e. RFP-14-002 contemplates the use of renewable and sustainable natural  
8 resources at the development and occupancy stages, which is extremely  
9 valuable to environmental consciousness in the northern part of Guam,  
10 which sits above the island's only aquifer; it also commits to a conservatory  
11 of land to ensure that Lajuna Point is not developed into a concrete jungle.  
12 Purestone's environmental consultant, a Region 9 Environmental Scientist,  
13 will ensure the highest quality standards and compliances are followed with  
14 Environmental Protection Agency (EPA), Guam Environmental Protection  
15 Agency (GEPA), Natural Resources Board, and all other government  
16 agencies.
- 17 f. RFP-14-002 was completed through competitive sealed bidding; a  
18 cancellation of RFP-14-002 would require additional resources to re-bid, in  
19 addition to the substantial costs associated with RFP-14-002.
- 20 (iii) GEDA and CLTC violated Guam Procurement Law Procurement Regulations by  
21 not acting in good faith in the administration of this procurement.  
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## TRANSACTION REPORT

JUL/14/2016/THU 10:22 AM

## BROADCAST

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
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002		10:15AM	6494146	0:01:42	10	MEMORY OK	SG3 7594
003		10:17AM	6489002	0:03:29	10	MEMORY OK	G3 7594
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	<b>Jay Rojas</b> Administrator Guam Economic Development Authority 590 South Marine Corps Drive Tamuning, Guam, 96913 Phone: (671) 647-4332 Fax: (671) 649-4146	<b>Pages:</b>	10 (including cover page)
<b>CC:</b>	<b>Jacqueline Taitano Terlaje.</b> Attorney for Appellant Purestone, LLC 284 West Chalan Santo Papa Hagatna, Guam 96910 Phone: (671) 648-9001 Fax: (671) 648-9002	<b>Date:</b>	July 14, 2016
		<b>Phone:</b>	(671) 475-0390 x. 208
		<b>Fax:</b>	(671) 472-7951

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Jerrick Hernandez, Auditor

[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)

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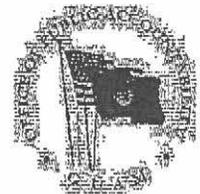
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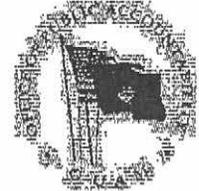
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