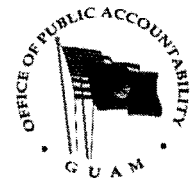


Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Mr. Ray S. Topasna Director Guam Housing and Urban Renewal Authority 117 Bien Venida Avenue Sinajana, Guam 96910 Fax: (671) 300-7565	From:	Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
	Anthony C. Perez, Esq. Law Office of Anthony C. Perez Suite 802, DNA Building 238 Archbishop Flores Street Hagatna, Guam 96910 Tel: (671) 475-5055/7 Fax: (671) 477-5445	Pages:	6 (including cover page)
CC:	Mr. Eddie J. Reyes President Flame Tree Freedom Center, Inc. 206 B Chalan Kanton Tasi Chalan Pago, Guam Eddy.reyes@ftfcinc.com	Date:	August 6, 2019
		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951

Re: OPA-PA-19-006 Decision and Order RE Purchasing Agency's Motion to Dismiss and Appeal for Lack of Jurisdiction

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



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

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In the Appeal of)
Flame Tree Freedom Center, Inc.)
Appellant.)

Appeal No: OPA-PA-19-006

**DECISION AND ORDER RE
PURCHASING AGENCY'S
MOTION TO DISMISS AN APPEAL
FOR LACK OF JURISDICTION**

To: Purchasing Agency:
Guam Housing and Urban Renewal Authority
C/O Anthony C. Perez, Esq.
Law Office of Anthony C. Perez
Suite 802, DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910
Telephone: (671) 475-5055/7
Facsimile: (671) 477-5445

Appellant:
Flame Tree Freedom Center, Inc.
C/O Eddie J. Reyes, President
206 B Chalan Kanton Tasi
Chalan Pago, Guam
Email: Eddy.reyes@ftfcinc.com

THIS MATTER came before the Public Auditor on July 9, 2019, for a hearing on Purchasing Agency GUAM HOUSING AND URBAN RENEWAL AUTHORITY's (Hereafter Referred to as "GHURA") Motion to Dismiss for Lack of Jurisdiction filed in this matter on June 21, 2019. Appellant FLAME TREE FREEDOM CENTER, INC. (Hereafter Referred to as "FLAME TREE") was represented by its President, Eddie Reyes. Albert Santos, A/E Manager, and Greta Balmeo, Buyer Supervisor I, appeared on behalf of GHURA and was represented by GHURA's Counsel of Record, Anthony C. Perez, Esq.

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BACKGROUND

On February 28, 2019, GHURA issued Invitation for Bid (IFB) GHURA-COCC-019-001, a procurement for ground maintenance services for GHURA properties. FLAME TREE was one of the prospective bidders that picked up an IFB on the same day.

On March 11, 2019, FLAME TREE submitted a letter to GHURA’s Executive Director stating that “FLAME TREE, a non-profit organization that employs individual with disabilities, is hereby expressing formal interest in providing the subject services per 5 GCA § 5001 (d) and § 5217.

Policy Concerning Sheltered Workers or Persons with Disabilities. If any entity of the government of Guam or any entity expending governmental funds intends to procure any supply or service which is offered by a nonprofit corporation employing sheltered workers or persons with disabilities, or a government of Guam entity employing sheltered workers or persons with disabilities, then that entity shall procure such supply or service from that nonprofit corporation or government entity if the supply or service is available within the period required by the procuring entity. 5 GCA § 5001 (d)

Procurement from Nonprofit Corporations. A contract may be awarded for a supply or service without competition when the contractor is a nonprofit corporation employing sheltered or handicapped workers. As a condition of the award of the contract the contractor must certify that labor on the project will be performed by handicapped persons except that supervisory personnel do not have to be handicapped. A contractor awarded a contract pursuant to this Section shall not be required to post any of the bonds required under Article 5 of this Chapter. 5 GCA § 5217

1 On March 28, 2019, the deadline for the IFB, proposals were received by four prospective
2 bidders: GUAM CLEANING MASTERS, GET LLC, SUN LEADER, and FLAME TREE.

3
4 On April 9, 2019, FLAME TREE issued a letter to GHURA's Executive Director
5 reiterating the 5 GCA provisions cited in its March 11, 2019 letter, how GHURA handled prior
6 ground maintenance contracts with FLAME TREE using those same 5 GCA provisions.

7 On May 6, 2019, GHURA issued a Notice of award to all prospective bidders indicating
8 that Base Bid No. 3 was awarded to FLAME TREE, Base Bid No. 1 was awarded to GET, LLC,
9 and Base Bid No. 2 was not awarded.

10
11 On May 7, 2019, FLAME TREE filed its protest letter.

12 On May 17, 2019, GHURA issued a response letter denying FLAME TREE's protest.

13 On May 30, 2019, FLAME TREE filed its appeal with the Office of Public Accountability
14 (OPA).

15 DISCUSSION

16 FLAME TREE contends that the procurement process was flawed from the beginning when
17 it was placed in a competitive situation contrary to 5 GCA § 5001 (d), § 5217 and § 5210. FLAME
18 TREE is of the opinion that it should have never been placed in a competitive situation based on the
19 Government of Guam policy established for non-profit organizations.

20
21 GHURA is arguing that the OPA lacks jurisdiction to hear this appeal because FLAME
22 TREE did not submit its protest within the 14 day limit of when they knew or should have known
23 the issues, and therefore OPA should dismiss the appeal. GHURA cites the February 28, 2019
24 issuance date of the IFB, where FLAME TREE should have known that the ground maintenance
25 services were going through the competitive sealed bids process.

1 For an appeal to be properly before the Public Auditor, the Appellant must have filed its
2 protest no later than fourteen days after it became aware that GHURA was procuring grounds
3 maintenance services through the competitive process, in this case an IFB, for which FLAME TREE
4 was aware of this on February 28, 2019, when it picked up an IFB packet. Fourteen days after the
5 IFB issuance date would have been March 14th, however FLAME TREE filed its letter of protest on
6 May 7, 2019, only after it received notice on May 6, 2019 that it was not awarded Base bid 1, and
7 not protesting the method of source selection.
8

9 **CONCLUSION**

10 Although 5 GCA § 5001 (d) and § 5217 does allow for services to procured with non-profit
11 organizations without having to going through the competitive bidding process, there is no guidance
12 as to what would happen if a non-profit organization chose to participate in a competitive bidding
13 process, which is what happened in this situation. Legislation may need to be introduced to address
14 this issue.
15

16 GHURA issued an IFB for ground maintenance services, of which FLAME TREE, a non-
17 profit organization decided to participate in. If FLAME TREE had an issue with GHURA going
18 through the competitive sealed bidding process, they should have protested fourteen days after they
19 picked up the IFB on February 28, 2019, which would have been March 14th.
20

21 Based on the foregoing, the Public Auditor hereby GRANTS the GHURA's Motion to
22 Dismiss the Appeal for Lack of Jurisdiction. The hearing scheduled for August 7, 2019 is hereby
23 vacated.
24

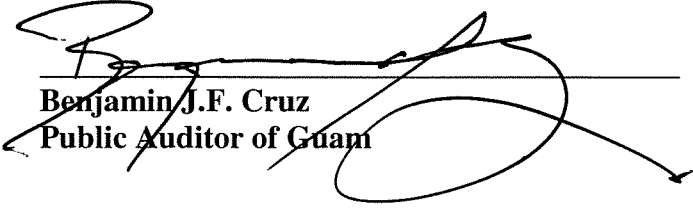
25 This is a Final Administrative Decision. The Parties are hereby informed of their right to
26 appeal from a Decision by the OPA to the Superior Court of Guam, in accordance with Part D of
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Article 9, of 5 G.C.A. §5481(a) within fourteen (14) days after receipt of a Final Administrative Decision.

A copy of this Decision shall be provided to the parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website www.opaguam.org.

SO ORDERED this 6th day of August 2019 by:



Benjamin J.F. Cruz
Public Auditor of Guam

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Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	CP: Completed	TS: Terminated by system
HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TI: Terminated by user	EC: Error Correct



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-19-006 Decision and Order RE Purchasing Agency's Motion to Dismiss and Appeal for Lack of Jurisdiction

Jerrick Hernandez <jhernandez@guamopa.com>
To: eddy.reyes@ftfcinc.com

Tue, Aug 6, 2019 at 5:21 PM

Hafa Adai,

Please see attached document and please confirm receipt of this email and the attachment.

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA
Auditor
Office of Public Accountability – Guam
www.opaguam.org
Tel. (671) 475-0390 ext. 208
Fax (671) 472-7951

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