

ANTHONY R. CAMACHO, ESQ.  
UNIVERSITY OF GUAM  
UOG Station  
Mangilao, Guam 96923

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 9/23/2021

TIME: 12:00  AM  PM BY: JH

FILE NO OPA-PA: 21-006

*Appearing as Counsel for University of Guam*

**PROCUREMENT APPEAL**

IN THE MATTER OF	)	DOCKET NO. OPA-PA-21-006
	)	
GUAM PACIFIC ENTERPRISES, INC.,	)	<b>UNIVERSITY OF GUAM'S</b>
	)	<b>MOTION TO DISMISS APPEAL</b>
Appellant.	)	
_____	)	

**COMES NOW**, Purchasing Agency UNIVERSITY OF GUAM (the "University"), through its General Counsel, ANTHONY R. CAMACHO, ESQ., who hereby MOVES the Public Auditor to DISMISS this appeal and this motion is based on the following Memorandum of Points and Authorities and any arguments, testimony, and evidence presented at a hearing on this motion.

**SUBMITTED THIS** 22<sup>nd</sup> day of September, 2021 by:

  
\_\_\_\_\_  
ANTHONY R. CAMACHO, ESQ.  
Attorney for the University of Guam

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE  
UNIVERSITY OF GUAM'S MOTION TO DISMISS APPEAL**

**BACKGROUND**

On or about April 26, 2021, the University issued UOG-IFB-21-10 (Air Purifier System and Replacement Filters) ("IFB"), four bidders submitted bids in response to the IFB, GPE, J&B MODERN TECH, WANG BROS. HOLDING LLC., and DOCOMO, and the University conducted a bid opening on or about May 20, 2021. See IFB's Abstract Analysis attached herein as Exhibit 1. On or about June 7, 2021, the University determined that DOCOMO submitted the lowest responsive bid and was awarded the contract for this IFB. See Notice of Award attached herein as Exhibit 2. On or about July 1, 2021, the University prepared a Bid Status that informed GPE that its bid was rejected due to high price. See Bid Status attached herein as Exhibit 3. Despite the preparation of these documents, they were not sent to GPE until September 2, 2021, due an oversight on the part of the University officials conducting the procurement for the IFB. See email attached herein as Exhibit 4. On or about September 7, 2021, GPE sent, via email, its "notice of protest" to the procurement official handling the procurement of the IFB. GPE filed this appeal on or about September 15, 2021. See Notice of Appeal attached herein as Exhibit 5.

**ARGUMENT**

The Public Auditor must dismiss this appeal because he lacks jurisdiction over this matter because it is not properly before him due to Appellant GUAM PACIFIC ENTERPRISES, INC.'s ("GPE") failure to submit a protest to the University's President and because it did not receive a decision deciding the protest from the University prior to

filing this appeal before the OPA as required by the University's procurement regulations, Guam Procurement Law and the Rules of Procedure for Appeals before the Public Auditor.

**The Public Auditor does not have the Jurisdiction to hear this matter.**

The Public Auditor does not have the jurisdiction to hear this matter. Generally, any objection or motion addressed to the jurisdiction of the Public Auditor shall be promptly filed. 2 G.A.R., Div. 4, §12104(c)(9). The jurisdiction of the OPA is limited to matters properly submitted to it. 5 G.C.A. §5703(a) and *TRC Environmental Corp. v. OPA*, Superior Court of Guam Special Proceedings Case No. SP0160-07, Decision and Order, p. 5 (Nov. 24, 2008). Further, a purchasing agency's procurement protest decision relative to the protest of a method of selection, solicitation, or award of a contract, may be appealed by the protestant to the Public Auditor within fifteen (15) days after receipt of the protestant of the notice of decision. 5 G.C.A. §5425(e). Thus, a protest and a protest decision are required for this matter to be properly before the Public Auditor and for the Public Auditor to have jurisdiction. Here, as will be shown below, this matter is not properly before the Public Auditor because GPE has not filed a protest with the University and the University has not issued a protest decision that GPE could appeal.

**GPE has not filed a Protest**

GPE has failed to file a protest concerning the method of selection, solicitation, or award of the IFB's contract. Generally, a protest shall be made in writing to the University's President and shall be filed in duplicate within fourteen (14) working days after the protestor

knows or should have known of the facts giving rise thereto and a protest is considered filed when received by the University's President. Section 9.2.3.1, University of Guam's Procurement Regulations ("UOGPR"). Protests filed after the fourteen (14) working day period shall not be considered. Id. Further, the written protest shall include as a minimum the following: (1) The name and address of the protestor; (2) Appropriate identification of the procurement, and, if a contract has been awarded, its number; (3) A statement of reasons for the protest; and (4) Supporting exhibits, evidence, or documents to substantiate any claims and if supporting documents are not available within the filing time, the expected availability date shall be indicated. Section 9.2.3.3, UOGPR. Here, GPE's September 7, 2021, email attached herein as Exhibit 5 is not a protest because it fails to meet the aforementioned regulatory standard for the filing of protests. First, it was not filed in duplicate with the University's President, instead GPE merely sent the email to the University's Procurement Administrator. As a result, GPE has not filed any protest because protests are only considered filed when they are received by the University's President. Second, GPE's email does not meet the minimum standards required of a protest because it lacks a statement of reasons for the protest and because it lacks supporting exhibits, evidence, or documents to substantiate any of GPE's claims. Indeed, GPE's email is devoid of any claim at all. The underlying reason for the protester to state his claims is so the purchasing agency can properly review and respond to them. Here, the University had no notice of any of GPE's claims concerning the IFB until it received notice of this appeal. Hence, GPE's September 7, 2021 email is not a protest because it does not comply with the University's Procurement Regulations.

**The University has not issued a Protest Decision in this Matter.**

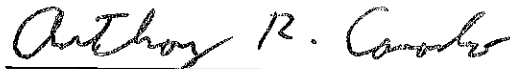
The University has not issued a Protest Decision in this matter. An appeal filed with the Public Auditor shall include a copy of prior decisions or determinations of the protest or protests. 2 G.A.R., Div. 4, §12104(b)(5). Further, the Public Auditor may dismiss an appeal for the appellant's failure to comply with this requirement. 2 G.A.R., Div. 4, §12104(b)(5). GPE did not comply with this requirement and will not be able to comply with this requirement because, as stated above, GPE has not filed a protest and, as a result, the University has not issued a protest decision concerning the claims GPE is raising for the first time in this appeal. The Public Auditor should apply the rule in *In the Matter of Kim Brothers Construction Corp.*, OPA-PA-11-07, Decision and Order dated February 22, 2012, to this matter because the facts in that case are similar to the facts here. In OPA-PA-11-07, the OPA dismissed an "appeal" because the appellant had not followed the purchasing agency's procurement regulations regarding protests and the OPA dismissed the appeal and ruled that a protest and a purchasing agency's protest decision were required for the OPA to have jurisdiction over a procurement appeal. *Id.*, at 3. Similarly, as set forth above, there was no protest, and thus no determination of the protest by the University. Instead of filing a protest as required by the University's Procurement Regulations, GPE merely sent its email to the University's Procurement Administrator on September 7, 2021 and filed this appeal with the Public Auditor on September 15, 2021 wherein GPE stated its claims concerning the IFB for the first time on appeal. Hence, the facts here mirror the facts in OPA-PA-11-07, and the Public Auditor must apply the rule in that case here and find that this matter is

not properly before the Public Auditor and find that the Public Auditor lacks the jurisdiction to hear it.

### CONCLUSION

Based on the foregoing, the Public Auditor must dismiss this appeal because it is not properly before him and because the Public Auditor lacks jurisdiction to hear it.<sup>1</sup>

SUBMITTED this 23<sup>rd</sup> day of September, 2021 by:



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ANTHONY R. CAMACHO, ESQ.  
Attorney for the University of Guam

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<sup>1</sup> Also of concern is that Appellant is, apparently, a corporation, yet its President, Mr. Lingsayan, and not counsel, purports to represent the corporation herein. It is well-established that a corporation may only appear before a tribunal through counsel. *See Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-02, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993); *United States v. Hagerman*, 545 F.3d 579, 581 (7th Cir. 2008); *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985); *Ukau v. Wang*, Superior Court of Guam Civil Case No. CV0687-14, Decision and Order (Feb. 1, 2019).

**ABSTRACT ANALYSIS**  
**UOG IFB BID NO. B21-10**
**Title: AIR PURIFIER SYSTEM and REPLACEMENT FILTERS**
**Date Issued: 04/26/21 Date/Time Opened: 05/20/2021/ 330pm**
**Amendments Issued: AMEND 1 5/07/2021 | AMEND 2 Issued: 5/10/2021 AMEND 3 Issued: 5/13/2021 AMEND 4 Issued: 5/18/2021**
*This Bid is requested for: Lowest Responsive and Responsible Bidder*

	<b>BIDDERS / VENDORS</b>			
	<b>Guam Pacific Enterprise, Inc.</b>	<b>J&amp;B MODERN TECH</b>	<b>WANG BROS. HOLDING LLC</b>	<b>DOCOMO</b>
Date Bid Submitted	05/20/2021	05/20/2021	05/20/2021	05/20/2021
Time Bid Submitted	1011a	1056a	1248p	121p
Business License	E: 10/2021	X	NONE	E:06/2021
Contact for Contract Administration (B)	X	X	X	X
Bidder's Qualifications (C)	X	X	X	X
BID SECURITY (D)	X	X	X	X
Major Shareholder Affidavit (E)	X	X	X	X
Non-Collusion Affidavit (F)	X	X	X	X
Gratuities, Kickbacks Favors (G)	X	X	X	X
Ethical Standards (H)	X	X	X	X
DOL Wage Determination (I)	X	X	X	X
Contingent Fees (J)	X	X	X	X
<b>AMEND 1</b>	X	X	X	None
<b>AMEND 2</b>	X	X	X	None
<b>AMEND 3</b>	X	X	X	None
<b>AMEND 4</b>	X	X	X	None
<b>BID PRICE/OFFER Brand/Model#</b>	RGF Environmental / HALO-ROVE (ALT BID: PIP MAX)	Koch Filter/Enviroco Isoclean CM	Aura Air / AURA AIR	AURA / Aura Air
<b>BID ITEM 1 GRAND TOTAL</b>	\$1000.00ea / <b>\$75,000.00</b>  ALT Bid: 600.00ea / <b>45000.00</b>	2488.00ea / \$186,600.00- \$33,870.00-100ea. HEPA Filter, \$2,800.00-100ea. Pre-filter, \$26,104.00-2ea.-40' Container, \$12,269.00-GRT <b>\$261,643.00</b>	\$48,675.00-75ea. Air Purifier, (\$11,900.00-100ea. Replacement Filters) <b>\$60,575.00</b>	\$32,940.00-75ea. Air Purifier, \$7,199.00-100ea. Replacement Filters <b>\$40,139.00</b>
<b>DELIVERY</b>	<b>8-12 Weeks (w/install)</b>	<b>14 Weeks</b>	<b>4 Weeks</b>	<b>1 Week</b>

**Attendees: (Print name & sign opposite the firm you represent)**

<b>Company/Firm Name</b>	<b>Representative (Print Name)</b>	<b>Signature</b>
1. GUAM PACIFIC ENTERPRISE, INC.	Sedfrey M. Linsangan	ONLINE ZOOM
2. J&B MODERN TECH	Gene Bangayan	ONLINE ZOOM
3. WANG BROTHERS HOLDING LLC	Vic Wang	ONLINE ZOOM
4. DOCOMO	Brianna Taijeron	ONLINE ZOOM

**Tabulators:**

Emily G. Gumataotao	SMA	ONLINE ZOOM
Jessiree Patao	BUYER II	ONLINE ZOOM

T: +1 671.735.2925 F: +1 671.735.3010 W: www.uog.edu E: procurementoffice@triton.uog.edu

Mailing Address: 303 University Drive UOG Station Mangilao, Guam 96913

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June 7, 2021

**DOCOMO PACIFIC**

Eleonor B.U. Lujan-Toves  
890 S. Marine Corps Drive  
Tamuning, GU 96913  
Email: [Elujan-toves@docompacific.com](mailto:Elujan-toves@docompacific.com)

**RE: NOTICE OF AWARD - UOG BID B21-10 "AIR PURIFIER SYSTEM and REPLACEMENT FILTERS"**

Dear Sir/Madam:

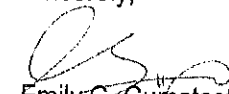
This letter is to certify that **DOCOMO PACIFIC** is being awarded the University of Guam **BID B21-10**. As a result of our evaluation of the above referenced IFB a purchase order will be forthcoming.

A representative from the respective unit will be in contact with you upon issuance of the purchase order.

If you have any questions, please feel free to contact me at 735-2925 or email at [uog.bids@triton.uog.edu](mailto:uog.bids@triton.uog.edu).

Thank you and Congratulations!

Sincerely,

  
Emily G. Gumataotao  
Supply Management Administrator

Please acknowledge receipt and return via email to [uog.bids@triton.uog.edu](mailto:uog.bids@triton.uog.edu).

\_\_\_\_\_  
(Please print name and sign)

\_\_\_\_\_  
(DATE)

cc: CLASS

T: +1 671.735.2925 F: +1 671.735.3010 W: [www.uog.edu](http://www.uog.edu) E: [uog.bids@triton.uog.edu](mailto:uog.bids@triton.uog.edu)

Mailing Address: 303 University Drive UOG Station Mangilao, Guam 96913

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**BID STATUS**

July 1, 2021

**Guam Pacific Enterprise Inc.**  
Sedfrey M. Lingsanga  
President/Owner  
Ph: 671-649-6994

Subject: **UOG Invitation for Bid No. B21-10, AIR PURIFIER SYSTEM and REPLACEMENT FILTERS**  
Bid Open: May 20, 2021

- / / Cancelled (in its entirety), or partially cancelled due to:
- Insufficient funds;
  - Change of specifications; or
  - Insufficient number of bidders
- /X/ Rejected due to:
- Late submission of bid;
  - No bid security or insufficient bid security amount submitted; as required by General Terms and Conditions;
  - Not meeting the delivery requirement as stated in the IFB
  - Non-conformance with the specifications
  - Inability to provide future maintenance and services to the equipment;
  - High price; or
  - Other:

/X/ Bid is recommended for award to: **Docomo Pacific, Inc.**

  
Emily G. Gumataelao  
Supply Management Administrator

Please Acknowledge Receipt and email back to [uog.bids@triton.uog.edu](mailto:uog.bids@triton.uog.edu) .

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VENDOR

(Print name & signature) Date

T: +1 671.735.2925 F: +1 671.735.3010 W: [www.uog.edu](http://www.uog.edu) E: [uog.bids@triton.uog.edu](mailto:uog.bids@triton.uog.edu)  
Mailing Address: 303 University Drive UOG Station Mangilao, Guam 96913  
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**Cynthia Guerrero**

**From:** UOG Procurement Bids  
**Sent:** Thursday, September 02, 2021 11:08 AM  
**To:** GPE INC  
**Cc:** Procurement Office  
**Subject:** Re: B21-10 GUAM PACIFIC ENTERPRISE INC  
**Attachments:** B21-10 - BID STATUS - GUAM PACIFIC ENTERPRISE.pdf; B21-10 NOA\_DOCOMO.pdf

Háfa Adai & Good Morning Sed,

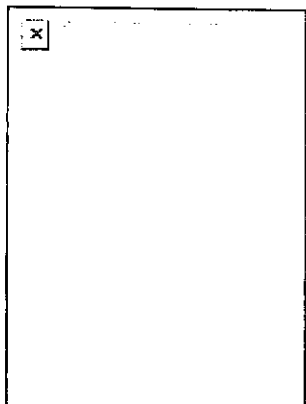
Apologize for the delay and oversight on my part. I prepped the Bid Status as of July 1, 2021 and thought I had sent it out, but realized it was stuck in my drafts folder.

See bid status and copy of Notice of Award to winning bidder.

Hope you will still consider participating in future bids for the university.

Thank you & Stay safe!

Si Yu'os ma'áse' & Have a nice day!,



Respectfully,  
**Emily G. Gumataotao**  
SUPPLY MANAGEMENT ADMINISTRATOR  
PROCUREMENT | ADMIN & FINANCE  
Office: 671-735-2925  
Fax: 671-735-3010  
[uog.bids@triton.uog.edu](mailto:uog.bids@triton.uog.edu)

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**From:** GPE INC <guampacific@gmail.com>  
**Sent:** Thursday, August 26, 2021 9:54 AM  
**To:** UOG Procurement Bids <uog.bids@triton.uog.edu>  
**Subject:** Re: B21-10 GUAM PACIFIC ENTERPRISE INC

**Cynthia Guerrero**

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**From:** GPE INC <guampacific@gmail.com>  
**Sent:** Tuesday, September 07, 2021 9:26 AM  
**To:** Gumataotao, Emily; uogbids@triton.uog.edu  
**Subject:** UOG Bid No, B21-10

[EXTERNAL EMAIL - Please use caution when opening attachments or clicking links.]

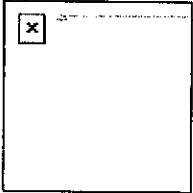
Dear Procurement Team,

This is a Notice of Protest relative to the subject Bid number.

Respectfully,  
Sedfrey M. Linsangan  
President  
Guam Pacific Enterprises Inc.  
649-6997-8-4

--

Guam Pacific Enterprise, Inc.  
Tel: (671) 649-6994/7/8



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