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**OPA Procurement Appeal Docket No. OPA-PA-21-011 University of Guam's Reply to GPE's Opposition to UOG's Motion to Dismiss Issues, Etc.**

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Cynthia Guerrero &lt;cguerrero@triton.uog.edu&gt;

Thu, Dec 23, 2021 at 6:24 PM

To: "jhernandez@guamopa.com" &lt;jhernandez@guamopa.com&gt;, GPE INC &lt;guampacific@gmail.com&gt;

Cc: "Camacho, Anthony" &lt;arcamacho@triton.uog.edu&gt;

*Hafa Adai:*

Attached is a copy of the University of Guam's Reply to GPE's Opposition to UOG's Motion to Dismiss Issues, Etc. in OPA Procurement Appeal Docket No. OPA-PA-21-011. Should you have any questions, please contact our office.

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Si Yu'os ma'åse',

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**OPA-21-011 UOG's Reply To GPE's Opposition to MTD Issues, Etc..pdf**

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*Appearing as Counsel for University of Guam*

**PROCUREMENT APPEAL**

IN THE MATTER OF	)	DOCKET NO. OPA-PA-21-011
	)	
GUAM PACIFIC ENTERPRISES, INC.,	)	<b>UNIVERSITY OF GUAM'S</b>
	)	<b>REPLY TO GPE'S OPPOSITION</b>
Appellant.	)	<b>TO UOG'S MOTION TO DISMISS</b>
_____	)	<b>ISSUES, ETC.</b>

**COMES NOW**, Purchasing Agency UNIVERSITY OF GUAM (the “University”), through its General Counsel, ANTHONY R. CAMACHO, ESQ., who hereby submits, UOG’s Reply to GUAM PACIFIC ENTERPRISES’S (GPE) Opposition to Dismiss Issues and to Strike Extraneous Pleadings. Unfortunately, GPE, in its Opposition filed on December 14, 2012 herein (“Opposition”), relies on unsupported claims and accusations, rather than facts and law.

**I. A CORPORATION CANNOT APPEAR BEFORE A TRIBUNAL EXCEPT THROUGH COUNSEL**

GPE has appeared in this proceeding without representation of counsel. Instead, its President, Sedfrey Lingsayan has signed all handwritten filings on behalf of GPE herein. Mr. Lingsayan is not licensed to practice law, and the OPA should not allow him to act as a lawyer 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, 210-2, 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 Co.*, 764 F.2d 1381, 1385 (11th Cir.1985); and *Ukau v. Wang*, Superior Court of Guam Civil Case No.CV0687-14, Decision and Order (Feb. 1, 2019). In this matter, the OPA should order that GPE either appear through counsel or dismiss GPE's appeal herein. A corporation cannot appear *in propria personam*, and instead must appear through counsel. Requiring GPE to appear herein through counsel would benefit the OPA and the parties by avoiding the ill-informed, irrelevant, and repetitive filings by Lingsayan herein which take up inordinate time and resources of all concerned. The OPA should put an end to this by requiring GPE to appear by counsel herein.

## **II. THE OPA SHOULD DISMISS GPE'S UNTIMELY PROTESTS**

As set out in the University's original moving papers, three of the issues asserted by GPE herein were not the subject of a timely protest. A party must submit his or her protest within 14 days when the relevant facts were, or should have been, known. See section 9.2.3.1 of the University's Procurement Regulations. GPE was aware of the \$25 fee for copies of the IFB, and the purported "violation" of the "Buy American Act" months before GPE got around to making a protest. As such, the OPA should dismiss these "protests" as untimely. See *In the Appeal of Data Management Resources, LLC*, Appeal No. OPA-PA-11-010, Decision and Order (August 29, 2011) (OPA *sua sponte* dismissed appeal when notice of appeal was untimely). Similarly, GPE's assertion that the employees in the

University's procurement division were "unqualified" is likewise untimely, in that no protest was ever made of such issue to the University, and therefore there is no agency denial of same to appeal. See *In the Appeal of Able Industries of the Pacific*, Appeal No. OPA-PA-13-007, Decision and Order (July 23, 2013) (Appeal dismissed when the protest, and appeal thereof, was untimely); *In the Appeal of Juan C. Tenorio, P.E.*, Appeal No. OPA-PA-11-006, Decision and Order (March 15, 2011) (Appeal dismissed when there was no agency decision denying protest which could be subject of appeal).

### **III. THE OPA LACKS JURISDICTION OVER ISSUES WHICH DO NOT VIOLATE PROCUREMENT LAW**

GPE also complains that the University did not promptly advise it of the award of the IFB in question to another bidder. However, as noted in the University's original moving papers, such delay does not constitute a violation of any procurement statute. As such, the OPA lacks jurisdiction over an "appeal" of such issue. See *In the Appeal of Teleguam Holdings, LLC*, Appeal No. OPA-PA-13-016, Decision and Order (January 7, 2014) at pp. 2-3 (OPA lacked jurisdiction of appeal of successful bidder's performance of contract, as such issue was not a violation of the procurement laws).

### **IV. THE OPA SHOULD STRIKE GPE'S UNAUTHORIZED FILINGS**

As noted previously, GPE has repeatedly submitted filings which are not authorized herein. GPE seems to believe that it can do as it pleases, filing whatever it wants and whenever doing so strikes its fancy. The OPA should not indulge such flouting of its

rules. The orderly course of these proceedings requires that the OPA strike GOE's unauthorized filings herein.

### CONCLUSION

Based on the forgoing, the OPA should grant the University's Motion to Dismiss Issues and to Strike Extraneous Pleadings.

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



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