



Jerrick Hernandez <jhernandez@guamopa.com>

OPA PA 21 015

GPE INC <guampacific@gmail.com>

Mon, Jan 17, 2022 at 2:53 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>, "Camacho, Anthony" <arcamacho@triton.uog.edu>, Carmelita Blas <cgblas@triton.uog.edu>, Vince Duenas <vduenas@guamopa.com>, "Gumataotao, Emily" <eggumataotao@triton.uog.edu>

Dear Mr Hernandez and Atty Camacho,

Please see attached corrected rebuttals with a complete number from pages 1 to 9.
The first document that was emailed does not contain page 4. Kindly confirm receipt of this email and disregard the previous email.

Very Respectfully,
Sedfrey M Linsangan
President
Guam Pacific Enterprise, Inc.
Tel: (671) 649-6994/7/8



This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error, please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee, you should not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

 **01 17 2022 document.pdf**
3488K

BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM

In the Appeal of
Guam Pacific Ent. Inc.
Appellant
v.

University of Guam

Appeal NO. OPA-PA-21-015

Rebuttal to VOG's Rebuttal

Memorandum of Points and Authorities

Pursuant to Section 12104 of Div. 4 of 2 GAR, (4), "Unsolicited agency rebuttals shall be considered if filed within 5 days after receipt by the Public Auditor of the comments to which rebuttal is directed." Therefore my rebuttal is timely and warrants consideration.

GPE Comments on Agency Report are Timely
As prescribed by the Public Auditor Cruz
Order or letter, VOG will serve a copy
(1) of the Agency Report. VOG fails

to send a copy but instead emailed a copy that cannot be opened. As I've stated, my worker called Cynthia but still cannot be opened. It was opened after 4 days but they sent the wrong Agency Report. I just found it out on OPA Filed Cases. It is VOG that is not following the Order of OPA Cruz and Procurement Law. VOG's claim is groundless

Legal Misinterpreted my Pleading that I failed to file a Protest.

My protest is valid since it is in line with the pandemic situation. The issue here is the VOG never responded to my Protest. It is the Procurement Department with no author or maker of the response. VOG is not acting in good faith (Section 5001 of Procurement Law) My protest is referring to the procurement on HVAC system, complied with the reason for the protest and provides the statutes,

Executive Order and Buy American Act provisions that were not adhered on 15% Bid bond. It is VOG that is not following the law on Public Trust by not identifying the author of the response on my Protest.

Protest was Timely.

Section 9.2.2 of VOG Procurement Regulations " (Complaint to Procurement Officer) GSA Section (9-101.02) " provides that complainants should seek resolution of their complaints initially with the President. Such complaints may be made verbally or in writing. "

Discussion

VOG provided us the opportunity to resolve our complaints. It was raised to them on Nov. 5, 2021 but I did not get a favorable decision on December 5. That is the date that I was aggrieved because of the facts

or fact that my complaint or concerns on 15% bid bond was a matter of fact rejected by VOG. VOG claims fails.

③ PE may appear without Atty. representation.

OPA as an independent body does not adhere to judicial rules and practices. Public Officials, Hearing Officers and Government workers have to disburse their duties impartially. Legal Counsel has had presided for decades as a hearing officer of OPA and could preside over a Pro Se Appellant but did not disqualify them. Even the Small Claims Court, Superior Court, Supreme Court have different rules on Pro Se representation. Small Claim is also a court but does not require Atty. for Companies. The question is why the Legal Counsel want me disqualified as a Pro Se?

Is it because I can provide credible arguments and expose the wrongdoing of the Procurement?

Section of Federal Law, Executive Order were provided.

VOG here is misguided. Section 1 and Section 3 of President Biden's Executive Order # 14005 were provided to VOG since November 2021. Please see (Exhibit A) Section 1 and 3 conflicts on the 15% bid bond which is a Guam law conflicts with the Buy American Act and President Biden Executive Order 14005. CARES Act is an Aid Relief Economic Security Act due to Corona virus. How it could be an Aid Relief if Guam law will impose the restrictive burdensome 15% bid bond: American Rescue Act Fund intention or provides to rescue the American economy, workers and manufacturers. 15% bid bond conflicts on res

cing American small business owners

5

that represent US manufacturers. Federal funding covers all Federal financial assistance Award whether it is CARES Act, American Rescue Act, HUD funding and other types of Federal funding or other source.

It is an open book that past and present Governor spent federal funds on supplies and services without imposing the 15% Bid bond. Additional evidence will be forwarded to OPA in due time. But Section 1 and 3 are written in the simplest language that provides the application of the Executive Order 14005.

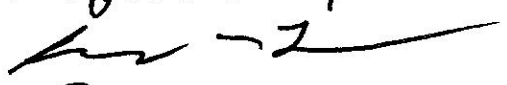
VOG is evading the Buy American Act

VOG had no answer that the product they selected did not complied with the Buy American Act. VOG is evading this issue because they made the wrong choice.

Conclusion.

There are so many compelling arguments on my side but many violation on VOG's side that my appeal is not frivolous. It is these arguments that are frivolous and not consistent with Guam Procurement Law, VOG Rules and Federal laws and Executive Order. It is VOG that needs to be Sanctioned because they are repeating the same mistakes.

Dated: 1/17/2022

Respectfully Submitted

Pro Se

BRIEFING ROOM

Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers

JANUARY 25, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is the policy of my Administration that the United States Government should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The United States Government should, whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America's workers thrive. Additionally, to promote an accountable and transparent procurement policy, each agency should vest waiver issuance authority in senior agency leadership, where appropriate and consistent with applicable law.

Sec. 2. Definitions. (a) "Agency" means any authority of the United States that is an "agency" under section 3502(1) of title 44, United States Code, other than those considered to be independent regulatory agencies, as defined in section 3502(5) of title 44, United States Code.

(b) "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to Federal financial assistance awards or Federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods offered in the United States. Made in America Laws include laws requiring domestic preference for maritime transport, including the Merchant Marine Act of 1920 (Public Law 66-261), also known as the Jones Act.

(c) "Waiver" means an exception from or waiver of Made in America Laws, or the procedures and conditions used by an agency in granting an exception from or waiver of Made in America Laws.

EXHA

Sec. 3. Review of Agency Action Inconsistent with Administration Policy. (a) The head of each agency shall, as soon as practicable and as appropriate and consistent with applicable law, including the Administrative Procedure Act, consider suspending, revising, or rescinding those agency actions that are inconsistent with the policy set forth in section 1 of this order.

(b) The head of each agency shall, as soon as practicable and as appropriate and consistent with applicable law, including the Administrative Procedure Act, consider proposing any additional agency actions necessary to enforce the policy set forth in section 1 of this order.

Sec. 4. Updating and Centralizing the Made in America Waiver Process. (a) The Director of the Office of Management and Budget (OMB) shall establish within OMB the Made in America Office. The Made in America Office shall be headed by a Director of the Made in America Office (Made in America Director), who shall be appointed by the Director of OMB.

(b) Before an agency grants a waiver, and unless the OMB Director provides otherwise, the agency (granting agency) shall provide the Made in America Director with a description of its proposed waiver and a detailed justification for the use of goods, products, or materials that have not been mined, produced, or manufactured in the United States.

(i) Within 45 days of the date of the appointment of the Made in America Director, and as appropriate thereafter, the Director of OMB, through the Made in America Director, shall:

(1) publish a list of the information that granting agencies shall include when submitting such descriptions of proposed waivers and justifications to the Made in America Director; and

(2) publish a deadline, not to exceed 15 business days, by which the Director of OMB, through the Made in America Director, either will notify the head of the agency that the Director of OMB, through the Made in America Director, has waived each review described in subsection (c) of this section or will notify the head of the agency in writing of the result of the review.

(ii) To the extent permitted by law and consistent with national security and executive branch confidentiality interests, descriptions of proposed waivers and justifications submitted to the Made in America Director by granting agencies shall be made publicly available on the website established pursuant to section 6 of this order.

(c) The Director of OMB, through the Made in America Director, shall review each proposed waiver submitted pursuant to subsection (b) of this section, except where such review has been waived as described in subsection (b)(i)(2) of this section.

(i) If the Director of OMB, through the Made in America Director, determines that issuing the proposed waiver would be consistent with applicable law and the policy set forth in section 1