M Gmail   **Jerrick Hernandez <jhernandez@guamopa.com>**

OPA-PA-21-011: University of Guam's Hearing Brief

Cynthia Guerrero <cguerrero@triton.uog.edu>   Tue, Jan 18, 2022 at 3:59 PM
To: Jerrick Hernandez <jhernandez@guamopa.com>, GPE INC <guampacific@gmail.com>
Cc: "Camacho, Anthony" <arcamacho@triton.uog.edu>

Hafa Adai:

Attached herein is a copy of the University of Guam's Hearing Brief in Procurement Appeal OPA-PA-21-011. Kindly acknowledge receipt.

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Si Yu'os ma'åse',

Cynthia T. Guerrero, MPA

Office of the Legal Counsel
Office: +1 (671) 735-2992
cguerrero@triton.uog.edu
https://www.uog.edu/administration/office-of-the-president/legal-counsel

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

Appearing as Counsel for University of Guam

PROCUREMENT APPEAL

IN THE MATTER OF	)	DOCKET NO. OPA-PA-21-011
	)	
GUAM PACIFIC ENTERPRISES, INC.,	)	**UNIVERSITY OF GUAM'S**
	)	**HEARING BRIEF**
Appellant.	)	
	)	

  COMES NOW, Purchasing Agency UNIVERSITY OF GUAM (the "University"),

through its General Counsel, ANTHONY R. CAMACHO, ESQ., who, pursuant to the

OPA's December 6, 2021 Scheduling Order, hereby submits its hearing brief in this matter

which is as follows:

BACKGROUND

  UOG hereby incorporates by reference as if fully set forth herein, the factual

background of this matter set forth in its Statement Answering the Allegations of GPE Inc.'s

Appeal in UOG's Agency Report filed in this matter on November 4, 2021, and the factual

and procedural, on appeal, background of this matter set forth in UOG's Motion to Dismiss

Issues and to Strike Extraneous Pleadings filed in this matter on December 10, 2021.

PENDING PRELIMINARY ISSUES

As of the date of this filing, the posture of this case is that there is an OPA decision pending on UOG's Motion to Dismiss Issues and to Strike Extraneous Pleadings which was heard on January 5, 2022.   Perhaps the most pending preliminary issue is whether GPE INC. (GPE), may appear through its President, who is not a licensed attorney, without committing the unauthorized practice of law. This issue was raised in UOG's Reply to GPE's Opposition to GPE's Motion to Dismiss which was filed on December 23, 2021 after GPE ignored the OPA's very strong suggestion that GPE obtain counsel to represent it at the pre-hearing conference in this matter on December 6, 2021 and continued by and through its President by filing GPE's opposition to UOG's Motion to Dismiss. Other pending preliminary matters raised in UOG's Motion to Dismiss are that: (1) The Public Auditor must dismiss the issues of whether UOG personnel were qualified to evaluate the bids submitted in response to the IFB, whether UOG violated the federal Buy American Act, and whether and UOG improperly charged GPE $25 to receive the IFB Packet because, as was shown in UOG's motion to dismiss, they are not properly before the Public Auditor; (2) The Public Auditor must dismiss the issue of whether UOG gave GPE late notice of the award of the IFB contract to DOCOMO because UOG did not violate any Procurement Laws or Regulations by doing so and because there is no remedy for such act; and (3) That the OPA must strike and not consider the extraneous pleadings filed by GPE in this matter. UOG hereby incorporates by reference herein as if fully set forth, the arguments, points of authority, and exhibits submitted in support thereof, that were set forth in UOG's Memorandum of Points of Authorities in Support of UOG's Motion UOG's Motion to

Dismiss Issues and to Strike Extraneous Pleadings that was filed in this matter on December 10, 2021. In addition to those arguments, UOG adds that the OPA must also strike GPE's Reply to UOG's Reply to GPE's Opposition to UOG's Motion to Dismiss that was filed in this matter on December 27, 2021 because it is also an extraneous pleading as set forth in the aforementioned memorandum of points and authorities.
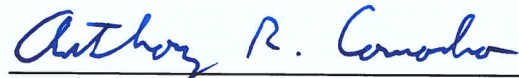
ARGUMENTS

UOG hereby incorporates by reference as if fully set forth herein its arguments, points of authorities, and exhibits submitted in support of said arguments set forth in UOG's Statement Answering the Allegations of GPE Inc.'s Appeal in UOG's Agency Report filed in this matter on November 4, 2021 that the OPA must sustain UOG's protest decision denying GPE's September 7, 2021 protest and deny GPE's appeal for the following reasons: (1) There is no remedy for GPE's claim that UOG gave late notice of its award to DOCOMO; (2) Docomo's Bid complied with the intention and background Exhibit A on page 20 of the IFB; (3) GPE's claim that UOG personnel were not qualified to evaluate the bids is untimely; (4) The federal Buy American Act does not apply to the IFB; and (5) GPE's claim that UOG improperly charged $25 is not properly before the OPA.

CONCLUSION

Based on the foregoing, the OPA must sustain UOG's protest decision denying GPE's September 7, 2021 protest and deny GPE's appeal, and award UOG its reasonable costs and attorney fees in this matter pursuant 5 G.C.A. §5425(h)(2).

SUBMITTED this 18th day of January, 2022 by:

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