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Docket No. OPA-PA-22-002: University of Guam's Reply to Appellant's Opposition to Motion to Dismiss

Cynthia Guerrero <cguerrero@triton.uog.edu>

Thu, Mar 31, 2022 at 12:05 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>, Seth Forman <forman@guamlawoffice.com>

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Hafa Adai:

Attached is a copy of the University of Guam's Reply to Appellant's Opposition to Motion to Dismiss in reference to Docket Number OPA-PA-22-002. Please acknowledge receipt. Thank you.

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Si Yu'os ma'åse',



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UOG's Reply to Appellant's Opposition to Motion to Dismiss.pdf
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PROCUREMENT APPEAL

IN THE MATTER OF)	DOCKET NO. OPA-PA-22-002
)	
ALL BUSINESS ENTERPRISES, CORP.,)	UNIVERSITY OF GUAM'S
)	REPLY TO APPELLANT'S
Appellant.)	OPPOSITION TO MOTION
_____)	TO DISMISS

COMES NOW, Purchasing Agency UNIVERSITY OF GUAM (UOG), through its General Counsel, ANTHONY R. CAMACHO, ESQ., who, in accordance with the OFFICE OF PUBLIC ACCOUNTABILITY'S (OPA) March 21, 2022 Scheduling Order, submits UOG's Reply to Appellant ALL BUSINESS ENTERPRISES, CORP. (ABE) Opposition to UOG's Motion to Dismiss Claims concerning JWS, and said reply is as follows:

A. The Federal Claims Court Cases cited by ABE are inapplicable to this matter.

ABE cites the cases of *Raymond Express International, LLC v. United States*, 124 Fed. Cl. 79 (2015) and *Universal Marine Co., K.S.C. v. United States*, 120 Fed. Cl. 240 (2015) to argue that ABE can challenge and must challenge JWS' bid because ABE's bid came in third place. However, the rulings in *Raymond* and *Universal Marine* cited by ABE concerned whether the plaintiffs in those cases had standing under 28 U.S.C. §1491(b)(1)

to bring a suit in the U.S. Federal Claims Court. *Raymond* at 86 and *Universal Marine* at 248. That federal statute, which has no counter-part in Guam's Procurement Law, states that both the United States Court of Federal Claims and the district courts of the United States shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement, and that both of those federal courts shall have jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded. *Id.* To determine whether the plaintiffs before them had standing under 28 U.S.C. §1491(b)(1), the court in *Raymond* and the court in *Universal Marine* applied a three-part test to determine whether the plaintiffs before them were "interested parties" under that statute: (1) The protestor must show that it was an actual or prospective bidder or offeror, and (2) it had a direct economic interest in the procurement or proposed procurement; and (3) the alleged errors in the procurement were prejudicial, and a party demonstrates prejudice when it can show that but for the error, it would have had a substantial chance of securing the contract. *Raymond* at 86 and *Universal Marine* at 248. Whether ABE has standing pursuant to 28 U.S.C. §1491(b)(1) to bring a suit in the U.S. Court of Federal claims is not an issue in this matter and the rulings in *Raymond* and *Universal Marine* are inapplicable here.

Instead, the applicable standard the OPA must apply to determine whether it has the jurisdiction to decide is set forth in ABE's claims is set forth in 5 G.C.A. §5703(a) which states that the OPA's jurisdiction is limited to those matters that are properly submitted to

it. As shown in UOG's Motion to Dismiss, ABE's allegations regarding JWS' bid are not properly before the OPA and the OPA does not have the jurisdiction to decide them because 5 G.C.A. §5425(a) limits the authority to file a protest to the method of source selection, solicitation or award of a contract and UOG has not made any contract award to JWS.

CONCLUSION

Based on the foregoing, the OPA must dismiss ABE's JWS Claims because they are not properly before the OPA, and the OPA must find that the portions of ABE's protest and this appeal concerning ABE's JWS Claims are at least frivolous, and possibly fraudulent, and meant solely to disrupt the procurement process and award UOG its reasonable costs and reasonable attorney fees in responding to them in accordance with 5 G.C.A. §5425(h)(2).

SUBMITTED this 31st day of March, 2022 by:



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