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**OPA-PA-24-005 in re the Appeal of Pacific Federal Management, Inc.**

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Fri, Nov 15, 2024 at 6:23 PM

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Hafa Adai Mr. Hernandez,

Please see the attached documents for efilng in the subject case:

1. Agency Report (2 pages)
2. Agency Statement (10 pages)

Have a nice weekend.

Best,

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**2 attachments****OPA-PA-24-005 Agency Report.pdf**

84K

**OPA-PA-24-005 Agency Statement.pdf**

179K

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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEAL**

**In the Appeal of**

APPEAL CASE NO.: OPA-PA-24-005

**PACIFIC FEDERAL MANAGEMENT  
INC.,**

**AGENCY STATEMENT**

Appellant.

ARRIOLA LAW FIRM HAGÁTÑA, GUAM 96910

**COMES NOW**, ARRIOLA LAW FIRM, LLC through the undersigned counsel, and on behalf of the A.B. Won Pat Guam International Airport Authority (“GIAA”). Pursuant to 2 GAR Div. 4 Section 12105(g), and in response to the appeal of Pacific Federal Management, Inc. (“PFM”), GIAA files this Agency Statement.

PFM would have the Public Auditor rewrite the script for the Guam Contractor’s License Board’s (“GCLB”) regulation of contractors in Guam. Despite knowing of specific and plain license requirements in an IFB in May of 2024, PFM did not protest those requirements until well after 14 days from when it knew of such requirements in August 2024. That delay deprives the OPA of jurisdiction over this appeal. PFM also ignores that GIAA confirmed PFM’s lack of appropriate licensure with the GCLB before rejecting PFM as a non-licensed contractor for the technical scope of services sought in the IFB. Because PFM’s arguments are untimely and meritless, PFM’s appeal should be denied. GIAA’s denial of PFM’s procurement protest should be affirmed.

## BACKGROUND

IFB No. GIAA-C07 Terminal Roof Replacement and Renewable Energy System -Phase I (the “IFB”) was issued and made available on GIAA’s website on May 22, 2024. A PFM representative downloaded the IFB package on May 30, 2024 and PFM acknowledged receipt of the IFB the same day. The IFB included a section that required bidders to provide in their sealed bid *inter alia* “**Other Requirements**. Copy of valid Contractor’s license – Classification A, B, C-8, C-13, C-33, C-37, C-41, C-42, C-48, C-51, C-55 and C-56.” Procurement Record (“PR”) at p. 40. GIAA utilized a third-party designer to develop the technical specifications for the IFB with the assistance of GIAA’s Engineering Division. That designer determined the license requirements as part of the for the design work for the IFB scope. The Bid Form included in the IFB indicated that the contractor’s licenses would have to be submitted with a sealed bid in response to the IFB. IFB pp. PR at p. 46. The Bidder’s Qualification Statement similarly indicated that bidders would have to submit their contractor’s license with their sealed bid. PR at p. 77. The form contract included with the IFB also indicated at Section 10.6 that the contractor warranted it was “duly licensed and authorized to transact the business of construction under the applicable laws of Guam.” PR at pp. 101-102.

PFM submitted its bid on July 5, 2024. PR at p. 1682 *et seq.* In its Bid, PFM check marked box 28 of the required forms, Mr. Robert Salas II executed the required forms checklist and submitted the same as part of PFM’s Bid. PR. at p. 1686. PFM provided the names of two subcontractors in a designation of contractors form. PR at p. 72. PFM executed and submitted the Bidder’s Qualification Statement and submitted its and its subcontractors’ Contractor’s licenses. PR. at pp. 1729, 1765-1766, 1834-1838. PFM provided a signed contract. PR at pp. 1793-1808. PFM noted in its bid, “PFM hereby submits the following Guam Contractor’s Licenses. ***Our team will obtain remaining licenses upon contract award.***” PR at 1833 (*emphasis added*).

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GIAA received two other bids from Core Tech International Corporation (“Core Tech”) and Green Community Development dba Surface Solutions (“Surface Solutions”) in response to the IFB. GIAA determined that only Core Tech submitted proof with its bid that it or its subcontractors possessed the GCLB licenses required to be submitted with its sealed bid. Like PFM, Surface Solutions also submitted proof of only some, but not all contractor’s licenses. Surface Solutions possesses A, B and certain C licenses from the GCLB.

GIAA also contacted the GCLB to confirm that neither PFM nor its subcontractors, and Surface Solutions nor its subcontractors, possessed all the GCLB licenses required by the IFB. PR at p. 2097. GIAA then prepared for the award related to this procurement with the assistance and approval of the Office of the Attorney General (“OAG”) pursuant to 5 G.C.A. Section 5150. GIAA issued a notice of award to Core Tech and gave notice of the same to Surface Solutions and PFM on or about August 19, 2024. PR at p. 1858. Because the procurement record was in the process of being, but was not yet certified and due to procedural requirements of the OAG that further delayed certification, GIAA stayed the procurement upon receipt of PFM’s August 29, 2024 letter of protest. PR at pp. 1856-857. GIAA denied PFM’s protest in full on October 14, 2024 after an intervening attempt at informal resolution. PFM filed the notice of appeal in this matter on October 29, 2024.

### **AGENCY POSITION**

**I. PFM and its subcontractors do not hold the appropriate licenses to perform the work set out in the IFB.**

PFM alleges that as a holder of the A and B license contractor’s license classifications, PFM is “automatically deemed to hold a license for all specialties listed under 25 GAR § 12106(a).” Notice of Appeal at p. 7 (Oct. 29, 2024). Similar to the protest level, PFM ignores the logical organization of 25 GAR § 12106(a) which has three separate licensee classification categories in subsections (a)(1), (a)(2) and (a)(3) – for A, B, and C. The Guam Contractor’s License Board (“GCLB”), the regulatory

authority responsible for administering the licensing scheme distinguishes between the three lists in 12106(a). See Part VI, Guam Contractor’s License Board Rules and Regulations available at: <https://guamclbcom.wordpress.com/wp-content/uploads/2016/09/rules-and-regulations.pdf>.

A and B licensees also cannot “act, assume to act or advertise as a specialty contractor *except for the specialties in which he is licensed.*” 25 GAR 12107(b)(1) (*emphasis added*). Other provisions of Guam law go even further. Guam law prohibits acting as a contractor of any type without the required license. 21 G.C.A. § 70108(a) (“No person . . . shall act, or assume to act or advertise, as a general engineering contractor, a general building contractor or a specialty contractor without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the . . . [G]CLB.”).

Additionally, Guam law makes clear that an A or B license holder, is required to separately and specifically be designated as a specialty licensee. See 21 G.C.A. § 70106(c) (clarifying that a B-licensed General Building Contractor is engaged in a principal contracting business “requiring in its construction the use of *more than two unrelated building trades or crafts*, or to do or superintend the whole or any part thereof” (*emphasis added*)); see also, 21 G.C.A. § 70107 (“A licensee may make application for classification and be classified in more than one (1) classification if the licensee meets the qualifications prescribed by the Board for such additional classification. For qualifying or classifying in additional classifications, the licensee shall pay the appropriate application fee but shall not be required to pay any additional license fee.”).

PFM argues that GIAA somehow conceded in its protest denial that PFM’s combination of A, B and subcontractor C-licenses are sufficient to meet specialty licenses of the IFB. Notice of Appeal at pp. 5-9. But PFM ignores the language in Section 70107 – which requires a licensee to apply for additional classifications and which prohibits an A and B licensee from “act[ing] assum[ing] to act or

adverti[ing] as a specialty contractor except for the specialties in which he is licensed.” PFM also conveniently ignores it conceded it lacked sufficient licensure in its bid where it proposed “PFM hereby submits the following Guam Contractor’s Licenses. Our team will obtain remaining licenses upon contract award.” PR at 1833.

As the body that administers the contractor’s license statutory scheme, the GCLB “has primary jurisdiction to make determinations of matters within its authority, and such decisions are entitled to deference unless contrary to law or unsupported by substantial evidence.” Gov’t Guam v. Gutierrez ex rel Torres, 2015 Guam 8 ¶ 16.

The GCLB issues A and B licensees C category licenses. See GCLB Contractor’s Listing available at <https://clb.guam.gov/index.php/contractors-listing/>; see also PR at 1383-1386 (GCLB Licenses for Core Tech International and Subcontractors with A, B, and C license classifications); PR at p. 1678-79 (GCLB License and RME License listing Surface Solutions A, B and C license classifications ); PR at p. 1680 (GCLB Verification of License Document confirming Surface Solutions C license classifications).

The Regulations confirm that A and B licensees are still required to obtain specialty C licenses to perform work requiring such licenses with specific and limited exceptions. See 25 GAR § 12107(b)(1) (“A licensee classified as a General Engineering Contractor or as a General Building Contractor shall not act, assume to act or advertise as a Specialty Contractor *except in specialties for which he is licensed*” (emphasis added)); see also, 25 GAR § 12107(b)(4) (“General Building Contractors and Specialty Contractors holding proper licenses need not have a C-30 Limited Home Improvement and Renovation contractor licenses to engage in home improvement and renovation contracting *in their own field*” (emphasis added); 25 GAR § 12107(d) (“A licensee may obtain additional classifications by filing an application and meeting the requirements regarding experience

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in the classification requested”). PFM’s position that A and B licensees automatically hold all or some C-licenses without specific designation would render these statutory and regulatory provisions, and the GCLB practice of issuing A and B licensees C-specialty licenses meaningless.

Finally, GIAA contacted the GCLB as part of its evaluation of bids. The GCLB confirmed that PFM does not possess the licenses required of the IFB. The GCLB therefore also does not agree that all A and B license holders like PFM are automatically qualified in all or some C Specialties listed under Section 12106(a) and required by the IFB. Presumably, the GCLB would have informed GIAA of A and B license holders not needing C licenses, or those specific C-licenses identified in the IFB, when GIAA inquired of the PFM’s licensure to perform the work sought in the IFB.

Based on the foregoing, PFM’s protest and appeal that it is automatically deemed to or does hold all of the required GCLB specialty C licenses required by the IFB pursuant to 25 GAR 12106(a) is without merit and the OPA should deny the appeal on this basis.

**II. PFM failed to timely appeal GIAA’s requirement of licensure at bid submission.**

Bidders who “may be aggrieved in connection with the method of source selection, solicitation, or award of a contract” are granted the ability to invoke Guam’s procurement protest and appeal statutory scheme. 5 G.C.A. § 5425(a). Under Guam law, an aggrieved individual must submit a protest within fourteen (14) days after such aggrieved individual knows or should know the facts giving rise thereto. 5 G.C.A. § 5425(a). A timely protest is a jurisdictional requirement of the procurement protest and appeal scheme in the Guam procurement law. Teleguam Holdings, LLC v. Guam, 2018 Guam 5 ¶¶ 20-21; DFS Guam L.P., 2020, Guam 20 ¶¶ 77, 81-87 (“a protest filed more than 14 days after the disappointed offeror or bidder had notice of the grounds for the protest is barred as untimely.”). DFS Guam L.P., 2020, Guam 20 ¶ 87. The Supreme Court recently affirmed that without a timely protest, the OPA has no jurisdiction to consider a procurement appeal. Pac. Data Sys. v. Guam Dep’t of Educ.,

2024 Guam 4 ¶ 22 *et seq* (reiterating DFS holding that the statutory timelines in the procurement and appeal scheme are jurisdictional).

Here, PFM's protest is based on requirements expressly stated in the IFB. As stated above, several places in the IFB made clear that proof of possession of valid contractor's licenses with classifications: A, B, C-8, C-13, C-33, C-37, C-41, C-42, C-48, C-51, C-55, and C-56 was required to be submitted with a sealed bid in response to the IFB.

PFM received the IFB on May 30, 2024. PFM's protest raises two separate points: (1) that A and B license holders do not need C-licenses, and (2) that GIAA's requirement that licenses be submitted with a bid in response to the IFB was improper. PFM was on notice of these bases of protest as of May 30, 2024 and therefore had 14 days from that date to protest GIAA's express requirements. If PFM believed that all A and B license holders do not need C licenses, or that GIAA could not require the licenses at bid submission, PFM had 14 days from May 30, 2024 to raise such protests to GIAA. PFM's bid acknowledged that it did not hold all required licenses but there was no protest of the requirement on bid submission. PR at 1833 ("PFM hereby submits the following Guam Contractor's Licenses. Our team will obtain remaining licenses upon contract award.").

PFM's protest on August 29, 2024, was therefore not made within 14 days of when it knew of the two bases for its protest. PFM's protest was untimely and the OPA lacks jurisdiction over this appeal.

**III. GCLB licenses were required at the time of bid submission because PFM executed a contract for GIAA to countersign.**

PFM argues that GIAA's requirement of bidders to hold and submit proof of certain contractor's licenses at the time of bidding is anti-competitive. Notice of Appeal at pp 10. GIAA determined PFM's bid was nonresponsive because it failed to submit proof of certain contractor's licenses that were required to be submitted with its bid.



A bidder's responsiveness concerns whether said bidder's bid conforms in all material respects to the requirements in the invitation for bids. See 5 G.C.A. § 5201(g). Here, GIAA's requirement of licensure at bid submission acknowledged the technical nature of the work to be procured, and the requirements in Guam that Contractors who perform such technical work must hold licenses issued by the GCLB.

PFM's authority supporting this argument is inapposite. In in the appeal of IP&E Holdings, LLC., the OPA determined that IFB insurance requirements by GPA favored existing GPA contractors since contractors without a preexisting relationship with GPA would not have the required coverage in place when bidding on GPA contracts. OPA-PA-15-006 (Sept. 18, 2015).

Here, the requirements of contractor's licenses required by the GCLB under Guam law does not favor any entity that does business with GIAA. Rather, the licenses are legally required by the GCLB to perform the work sought by the IFB. PFM does not contest that licensure in the C-specialties noted are required to perform the scope of work. PFM argues that it is automatically deemed licensed in those areas by virtue of its GCLB A and B Contractor's license, as discussed above. GIAA is not requiring licensure solely to eliminate competition. GIAA is complying with the law, which requires that the selected contractor is licensed to perform the work set forth in the IFB. See 21 G.C.A. Chapter 70; 25 GAR Chapter 12.

On submission of its bid, PFM submitted an executed contract that only needed to be countersigned by GIAA. GIAA could not execute a contract for work to be performed by PFM it was not licensed to perform the work. Thus, GIAA had no choice but to reject PFM's bid. PFM's appeal that GIAA's licensure requirement is anticompetitive is meritless and should be denied.

**IV. If PFM is correct, PFM was not the responsive bidder who submitted the lowest bid.**

Finally, at the protest level PFM requested that GIAA find that it “submitted proof of all necessary CLB licenses with its bid, find that PFM was the lowest responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids under 5 G.C.A § 5211(g), and award the contract to PFM.” Notice of Appeal, Ex. 2, PFM Protest at p. 6 (Oct. 29, 2024). On appeal, PFM now seeks a review of the procurement and award to the responsive and responsible bidder with the lowest bid price. Id. at pp. 10-11.

Surface Solutions submitted a bid with a lower price than PFM. Surface Solutions also holds GCLB A and B licenses and some C Licenses, but did not submit proof it holds all required C classification GCLB licenses with its bid. Surface Solutions’ bid was rejected despite submitting the lowest dollar amount bid in response to the IFB due to the lack of the required GCLB licenses. If PFM prevails in its argument that GIAA should not have required licensure at the time of award, it does not appear PFM would be entitled to an award related to this procurement. Because Surface Solutions did not appeal, Surface Solutions has no independent basis to seek relief related to the procurement and GIAA’s rejection of its bid as non-responsive.

Based on these circumstances, PFM should not be allowed to appeal to benefit Surface Solutions. Surface Solutions did not timely seek relief under the procurement protest and appeal scheme. Put another way, Surface Solutions is not entitled to bootstrap any claim for relief to PFM’s protest and appeal because Surface Solutions did not timely raise such request for relief to GIAA. PFM similarly should not be entitled to advocate for any favorable decision to Surface Solutions’ benefit as a result of its protest. The right to protest inures to the bidder who is aggrieved in connection with the method of source selection, solicitation or award. 5 G.C.A. § 5425(a). The right to protest does not allow a bidder to advance the claims of other bidders, to benefit from the claims of other bidders or to evade

the jurisdictional timelines as to every claim. Pac. Data Sys. v. Guam Dep't of Educ., 2024 Guam 4 ¶ 22.

**CONCLUSION**

Based on the foregoing, PFM's appeal should be denied in its entirety. Specifically, GIAA requests that the OPA:

1. Find that PFM's claims related to the Guam Contractor's License statutory scheme are untimely and therefore barred.
2. Find that PFM's claims related to the Guam Contractor's License statutory scheme are without merit and in conflict with the GCLB statutory and regulatory schemes and the GCLB's regulation of contractors in Guam.
3. Find that GIAA's actions related to the procurement were in accordance with applicable law and regulations and expressly reject PFM's allegations to the contrary.
4. Find that PFM's appeal is a frivolous abuse of the protest and appeal process and award fees to GIAA pursuant to 5 G.C.A. § 5425(h)(2).
5. Enter any other and further relief as the OPA may deem appropriate.

Dated: November 15, 2024, at Hagatna, Guam.

Respectfully submitted,  
**ARRIOLA LAW FIRM, LLC**

By:   
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