



Jerrick Hernandez <jhernandez@guamopa.com>

In the Appeal of Pacific Federal Management, Inc. - Docket No. OPA PA-24-005

Jennifer S. Mendiola <jsmendiola@bsjmlaw.com>

Mon, Nov 25, 2024 at 3:27 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

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Dear Mr. Hernandez:

Please see attached **Appellant's Comment On Agency Statement** for e-filing in the above-referenced matter. Kindly confirm receipt via return e-mail.

Thank you. Should you have any questions or concerns, please let us know.

Regards,

Jennifer S. Mendiola,

Secretary to Mr. Johnson and Ms. Baza

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2024.11.25 Appellant's Comment on Agency Statement re PFM OPA-PA-24-005.pdf

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8
9 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
10 **PROCUREMENT APPEAL**

11 **In the Appeal of**) Docket No. OPA PA-24-005
12)
13 **PACIFIC FEDERAL MANAGEMENT,**) **APPELLANT’S COMMENT ON**
14 **INC.,**) **AGENCY STATEMENT**
15)
16 **Appellant.**)

17 COMES NOW, Pacific Federal Management, Inc. (“PFM”) and, through undersigned counsel,
18 submits this Appellant’s Comment on Agency Statement in response to the Agency Statement
19 submitted by Procuring Agency Guam International Airport Authority (“GIAA”) on November 15,
20 2024.

21 On May 22, 2024, GIAA issued Invitation for Bid No. GIAA-C07-FY24, Project No. GIAA-
22 FY22-02-1, AIP No. 3-66-0001-TBD, concerning the bid for the Terminal Building Roof
23 Replacement and Renewable Energy System – Phase I at GIAA (the “IFB”). Three bids were
24 submitted:

Bidder	Total Bid Amount
Green Community Development dba Surface Solutions	\$7,898,800.00
Pacific Federal Management, Inc.	\$15,922,865.41
Core Tech International Corporation	\$20,068,296.00

1 GIAA awarded the contract to Core Tech International Corporation, who bid
2 \$20,068,296.00. This bid was \$4,145,430.59 higher than PFM and \$12,168,496.00 higher than
3 Green Community Development dba Surface Solutions.
4

5 In rejecting PFM's bid, GIAA held that it "was found to be nonresponsive and not
6 responsible as Bidder failed to submit and does not hold all required Contractor's License
7 classifications required in the IFB Package, Special Reminders (Bidder failed to submit and does
8 not hold C-8, C-41, C-42, C-48).
9

10 If the OPA rules in favor of GIAA, the result of this procurement will be that GIAA will
11 have succeeded in awarding this contract to the highest bidder, a party that bid \$4,145,430.59 more
12 to do the work than PFM, despite PFM being qualified to perform the same work under its CLB
13 licenses. This will inevitably result in the needless waste of millions of dollars.
14

15 **A. THE GIAA AGENCY STATEMENT CITES CONFLICTING VERSIONS OF THE CLB RULES AND
16 REGULATIONS**

17 The GIAA Agency Statement cites two different and conflicting versions of the CLB rules
18 and regulations. The first is 25 GAR Chapter 12. The second is the Guam CLB Rules and
19 Regulations available at [https://guamclbcom.wordpress.com/wp-content/uploads/2016/09/rules-
20 and-regulations.pdf](https://guamclbcom.wordpress.com/wp-content/uploads/2016/09/rules-and-regulations.pdf) (the "CLB WordPress Rules").
21

22 For clarity, there is a third set of CLB rules and regulations located at 29 GAR Article IV.
23 There is also a fourth set of CLB rules and regulations that became effective on July 11, 2024 (the
24 "New CLB Rules"). The New CLB Rules became effective just five days after the bids were due in
25 response to the IFB. The New CLB Rules repealed the CLB rules found at 29 GAR Article 4,
26 repealed the old CLB rules found at 25 GAR Chapter 12, and enacted the New CLB Rules as a new
27 25 GAR Chapter 12. This is discussed in the Certification of Approval by Default Pursuant to 5
28

1 G.C.A. § 9303(c) (the “Certificate of Approval”) that was issued by the Guam Legislature on July
2 11, 2024.¹ Notably, the Certificate of Approval does not even mention the CLB WordPress Rules.
3 This is because those rules were never properly promulgated under the Guam Administrative
4 Adjudication Law.
5

6 The fact there are so many different versions of the CLB rules is one reason agencies like
7 GIAA should not attempt to determine which CLB rules and licenses apply to one procurement or
8 another. Even the CLB found their own rules so contradictory and problematic that it repealed the
9 two different sets of rules that were in effect during the pendency of this procurement and replaced
10 them both with the New CLB Rules.
11

12 For GIAA to claim there is a logical organization to the CLB rules while two different official
13 versions of the rules existed at the same time during the pendency of the procurement and then cite
14 yet a third version of the CLB WordPress Rules in support of there being a logical organization to
15 the rules is nonsensical.²
16

17 **B. THE GUAM CONTRACTOR LAW EXPLICITLY STATES THAT GENERAL ENGINEERING**
18 **CONTRACTORS (“A LICENSE” HOLDERS) ARE LICENSED TO PERFORM WORK REQUIRING**
19 **SPECIALIZED ENGINEERING KNOWLEDGE AND SKILL ON AIRPORTS AND AIRWAYS**

20 PFM is a licensed General Engineering Contractor (an “A License”) holder. The term
21 General Engineering Contractor (an “A License” holder) is defined by 21 GCA § 70106(b) to:

22 (b) A *General Engineering Contractor* is a contractor whose principal contracting
23 business is in connection with fixed works requiring specialized engineering

24 ¹ See Certification of Approval by Default Pursuant to 5 G.C.A. § 9303(c), available at
25 <https://clb.guam.gov/wp-content/uploads/2024/08/7.11.24-CLB-Amendments-to-the-Rules-and-Regulations-Repeal-29-GAR-Repeal-and-Reenact-25-GAR-1.pdf>

26 ² See Agency Statement, p. 3-4 (“Similar to the protest level, PFM ignores the logical organization of 25 GAR
27 § 12106(a) which has three separate licensee classification categories in subsections (a)(1), (a)(2) and (a)(3) – for A, B,
28 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>.”)

1 knowledge and skill, including the following divisions *or* subjects: irrigations,
2 drainage, water, power, water supply, flood control, inland waterways, harbors,
3 docks and wharves, shipyards and ports, dams and hydroelectric projects, levees,
4 river control and reclamation works, highways, streets and roads, tunnels, **airports**
5 **and airways**, sewer, sewage disposal plants and systems, waste reduction plants,
6 bridges, overpasses, underpasses and other similar works, pipelines and other
7 systems for the transmission of petroleum and other liquid *or* gaseous substances,
8 parks, playgrounds and other recreational works, refineries, chemical plants and
9 similar industrial plants requiring specialized engineering knowledge and skill,
10 **powerhouses, power plants and other utility plants and installations, mines**
11 **and metallurgical plants**, land leveling and earth-moving projects, excavating,
12 grating, trenching, paving and surfacing work and **cement and concrete works in**
13 **connection with the above-mentioned fixed works.**

14 (emphasis added). This statutory definition of a General Engineering Contractor (an “A License”
15 holder) specifically states that “[a] General Engineering Contractor is a contractor whose principal
16 contracting business is in connection with fixed works requiring specialized engineering knowledge
17 and skill, including ... **airports and airways.**” 21 GCA § 70106(b) (emphasis added).

18 GIAA freely admits that PFM is licensed as a General Engineering Contractor (an “A
19 License” holder). Since PFM holds a General Engineering Contractor license (an “A License”), it is
20 licensed to perform work on fixed works requiring specialized engineering and skill, including
21 airports and airways. Any determination by GIAA that PFM is not licensed to perform work on
22 airports and airways, including on the Guam International Airport Authority, is thus contrary to
23 Guam law.

24 C. **GIAA’S POSITION THAT “A LICENSE” OR “B LICENSE” HOLDERS MUST HOLD SEPARATE
25 SPECIALTY LICENSES IS NOT SUPPORTED BY THE STATUTES CITED BY GIAA OR ANY
26 OTHER SECTION OF THE GUAM CONTRACTORS LAW; IT ALSO RENDERS THE “A
27 LICENSE” AND THE “B LICENSE” USELESS**

28 GIAA’s position that “Guam law makes it clear that an A or B license holder, is required to
separately or specifically be designated as a specialty licensee” is not supported by the Guam
contractor law, any CLB rules and regulations, or any case law. The statutes cited by GIAA in

1 support of its position are inclusive, not restrictive, and support the correct interpretation of Guam's
2 contractor law and regulations, that "A License" and "B License" holders are allowed by their
3 licenses to perform nearly all trade and craft work included in the "C License" subclassifications
4 and nearly all the work required for the IFB.
5

6 Title 21 G.C.A. § 70106(c), is cited by GIAA. It is the definition of a General Building
7 Contractor (a "B License" Holder). It states that:

8 (c) A General Building Contractor is a contractor whose principal contracting
9 business is in connection with any structure built, being built or to be built, for the
10 support, shelter and enclosure of persons, animals, chattels or movable property of
11 any kind, requiring in its construction the use of more than two (2) unrelated
12 building trades or crafts, or to do or superintend the whole or any part thereof.

13 The above statute does not at all require that a "B License" holder be "required to separately
14 and specifically be designated as a specialty licensee." It simply states that a General Building
15 Contractor (a "B License" Holder) is a contractor who works structures "requiring in [their]
16 construction the use of more than two (2) unrelated building trades or crafts, or to do or superintend
17 the whole or any part thereof." *Id.* There is nothing restrictive in that definition. The part that states
18 "more than two (2) unrelated building trades and crafts" instead means that a General Building
19 Contractor (a "B License" Holder), by definition, "is involved in using more than two (2) unrelated
20 building trades or crafts." *Id.* There is also nothing in that section which discusses specialty
21 contracting requirements.
22

23 GIAA also cited 21 G.C.A. § 70107(b). That statute allows a contractor that holds one license
24 to obtain a license for a different category in addition to the license it currently holds. There is
25 nothing 21 G.C.A. § 70107(b) that requires an "A License" holder or a "B License" holder to also
26 obtain a license in a "C License" subclassification to do any work they are already licensed to
27 perform under their existing "A License" or "B License." The fact an "A License" holder or a "B
28

1 License” holder may need to obtain licenses to do other work makes sense given that not all trades
2 and crafts listed in 25 GAR Ch. 12 § 12106(a)(1) (“A Licenses”) are included in the list of trades
3 and crafts listed in 25 GAR Ch. 12 § 12106(a)(2) (“B Licenses”). Therefore, an A License Holder
4 who wishes to do work listed in the trades and crafts afforded by 25 GAR Ch. 12 § 12106(a)(2) (“B
5 Licenses”) and that are not included in the list located at 25 GAR Ch. 12 § 12106(a)(1) (“A
6 Licenses”) may also sign up and qualify for the additional “B License” to do that work also.
7

8 This interpretation also makes sense in the context of “C Licenses” because there are very
9 limited “C License” subclassifications that are not covered in the lists of trades and crafts covered
10 by 25 GAR Ch. 12 § 12106(a)(1) (“A Licenses”) and 25 GAR Ch. 12 § 12106(a)(2) (“B Licenses”).
11 Important examples of these are the C-13 Electrical Contractor, C-37 Plumbing Contractor, and the
12 C-51 Warm Air Heating, Ventilating and Air Conditioning Contractor licenses (electricians,
13 plumbers, and HVAC contractors). These three licenses were identified by the IFB but are not
14 included in the lists found in 25 GAR Ch. 12 § 12106(a)(1) (“A Licenses”) and 25 GAR Ch. 12 §
15 12106(a)(2) (“B Licenses”). Thus, if an “A License” holder wishes to also do electrical, plumbing,
16 or HVAC work, they must obtain a “C License” in that subclassification. The C-13 (Electrical
17 Contractor), C-37 (Plumbing Contractor), and C-51 (Warm Air Heating, Ventilating and Air
18 Conditioning Contractor) are the only C License subclassification trades and crafts that are not
19 included in the list of licenses specified by GIAA in the IFB. Because PFM did not have a C-13
20 (Electrical Contractor), a C-37 (Plumbing Contractor), or a C-51 (Warm Air Heating, Ventilating
21 and Air Conditioning Contractor) license, it subcontracted that work to another company that had
22 those specialty licenses: Guam Pacific Mechanical & Electrical, LLC.
23
24
25
26

27 The rest of the C License category trades and crafts listed by GIAA in the RFP are included
28 in the lists of trades and crafts found in 25 GAR Ch. 12 § 12106(a)(1) (“A Licenses”) and 25 GAR

Ch. 12 § 12106(a)(2) (“B Licenses”). The overlap between the trades and crafts required by the IFB and the trades and crafts listed under 25 GAR Ch. 12 § 12106(a)(1) (“A Licenses”), 25 GAR Ch. 12 § 12106(a)(2) (“B Licenses”), and 25 GAR Ch. 12 § 12106(a)(3) (“C Licenses”) is shown in the following table:

Table 1: Trades Overlap Table

25 GAR §12106(a)(1) General Engineering Contractor “A License”	25 GAR §12106(a)(2) General Building Contractor “B License”	25 GAR §12106(a)(3) Specialty Contractor “C Licenses”
Cement Concrete	Cement Concrete	C-8 Cement Concrete Contractor
		C-13 Electrical Contractor
		C-37 Plumbing Contractor
Reinforcing Steel	Reinforcing Steel	C-41 Reinforcing Steel Contractors
	Roofing Contractor	C-42 Roofing Contractor
Structural Steel	Structural Steel	C-48 Structural Steel Contractor
		C-51 Warm Air Heating, Ventilating and Air Conditioning Contractor
Water Proofing	Waterproofing	C-55 Waterproofing Contractor
Welding	Welding	C-56 Welding Contractor

This also means GIAA’s claim that PFM was somehow acting in violation of 21 GCA § 70108(a) completely inapplicable to this matter. PFM was not advertising as a specialty contractor without a license when it submitted its bid. PFM was acting well within the trades and crafts afforded to it under 25 GAR §12106(a)(1) as an “A License” holder and the trades and crafts afforded to it under 25 GAR §12106(a)(2) as a “B License” holder (as shown in the table above) when it submitted its bid. PFM also made clear that its subcontractor, Guam Pacific Mechanical & Electrical, LLC, was the entity that held the necessary C-13, C-37, and C-51 licenses because it also submitted the CLB license of Guam Pacific Mechanical & Electrical, LLC.

If GIAA’s interpretation of the law is to be believed, then “A License” and “B License” holders have no real authority to perform any contracting work at all. They would be required to obtain “C License” subclassifications to do any work under their “A Licenses.” That is an absurd interpretation. For example, it would mean that a General Engineering Contractor (an “A License”

1 holder), who under the definition of “General Engineering Contractors,” is a “contractor whose
2 principal contracting business in connection with fixed works requiring specialized engineering
3 knowledge and skill, including ... hydroelectric projects ... airports and airways ... power plants
4 and other utility plants and installations ... and cement and concrete works in connection with the
5 above-mentioned fixed works” is required to obtain a C-8 Cement Concrete Contractor license to
6 perform cement and concrete works, which they are statutorily defined to be able to perform. *See* 21
7 GCA § 70106(b) (“cement and concrete works in connection with the above-mentioned fixed
8 works”). Again, this would be an absurd result.

11 **D. “A LICENSES”, “B LICENSES”, AND “C LICENSES” ARE NOT EXCLUSIVE. THE CLB RULES
12 DO NOT DISTINGUISH BETWEEN THREE LISTS OF LICENSES, THEY ONLY DISTINGUISH
13 BETWEEN WHAT SKILLS AND CRAFTS MAY BE PERFORMED UNDER EACH LICENSE AND
14 THOSE SKILLS AND CRAFTS OVERLAP GREATLY.**

15 There is a great deal of overlap between the lists of trades and crafts found under under 25
16 GAR Ch. 12 § 12106(a)(1), (2), and (3). Part of this overlap is shown in “Table 1: Trades Overlap
17 Table” above, which shows the overlap only involving the licenses specified in the IFB.

18 The full overlap between the 25 GAR Ch. 12 § 12106(a)(1), (2), and (3) is far more extensive.
19 It is with this context in mind that 25 GAR Ch. 12 § 12107(a)(4) must be understood. Title 25 GAR
20 § 12107(a)(4), states that:

21 (4) Any person who qualifies by written examination after the effective date of
22 these rules for a contractors license in the general engineering contractor
23 classification shall automatically be deemed to hold or be qualified for a license in
24 the specialties listed under §12106(a).

25 The fact that there is overlap between the trades and crafts specified in 25 GAR Ch. 12 §
26 12106(a)(1), (2), and (3) is exactly why this section exists. There would be no reason for a contractor
27 to take a separate examination or apply for a separate “C License” for a trade or craft that is already
28 subsumed in the list of trades and crafts included in the “A License” or “B License” the contractor

1 has already obtained. To do so would be redundant. This is exactly why when PFM submitted copies
2 of its “A License” and its “B License” that there was no need for it to submit a copy of “C Licenses”
3 for the categories of trades and crafts it was already licensed to perform under its “A License” and
4 “B License”. To do so would be redundant, because it is already licensed to do that work (see “Table
5 1: Trades Overlap Table”) and, under 25 GAR § 12107(a)(4), it is already deemed to hold a license
6 in those C License subclassifications.
7

8 Further, 25 GAR Ch. 12 § 12107(a)(4) cites to the broader 25 GAR Ch. 12 § 12106(a), not
9 the specific 25 GAR Ch. 12 § 12106(a)(1), (2), and (3). This supports PFM’s interpretation of how
10 this statute should be read.
11

12 **E. TITLE 25 GAR § 12107(b)(4) IS NOT PROOF A SEPARATE LICENSE IS REQUIRED FOR B
13 LICENSE HOLDERS TO DO SEPARATE WORK, IT IS CONFIRMATION THAT B LICENSE
14 HOLDERS DO NOT NEED A SEPARATE C LICENSE TO PERFORM HOME IMPROVEMENT
15 AND RENOVATION WORK**

16 GIAA cites 25 GAR § 12107(b)(4) for the position that “A License” holders and “B License”
17 holders “are still required to obtain specialty C licenses to perform work requiring such licenses with
18 specific and limited exceptions.” GIAA’s decision to cite 25 GAR § 12107(b)(4) is curious given
19 than this section explicitly states that a General Building Contractor (a “B License” holder) “**need**
20 **not** have a C-30 Limited Home Improvement and Renovation contractor’s license to engage in home
21 improvement and renovation contracting in their own field.”

22 The fact 25 GAR § 12107(b)(4) explicitly emphasizes that a General Building Contractor (a
23 “B License” holder) need not have a C-30 Limited Home Improvement and Renovation “C License”
24 makes sense given that the definition of a General Building Contractor (a B License holder)
25 specifically defines it include principal contracting work in connection with any structure built for
26 the support, shelter, and enclosure of persons, chattels, or moveable property:
27
28

1 (c) A General Building Contractor is a contractor whose principal contracting
2 business is in connection with any structure built, being built or to be built, for the
3 support, shelter and enclosure of persons, animals, chattels or movable property of
4 any kind, requiring in its construction the use of more than two (2) unrelated
5 building trades or crafts, or to do or superintend the whole or any part thereof.

6 Why would a contractor already licensed to do work under a “B License” in connection with
7 any structure built for the support, shelter, and enclosure of persons, chattels, or moveable property
8 also need a “C License” to undertake “Limited Home Improvement and Renovation?” It wouldn’t.
9 Such a license would be superfluous.

10 Thus, the language of 25 GAR § 12107(b)(4) does not support GIAA’s position at all. It
11 supports PFM’s argument that “A License” and “B License” holders should be allowed to perform
12 work they are licensed to perform without needlessly obtaining redundant “C Licenses.”
13 Specifically, this language supports the argument made by PFM in Section A above that PFM is
14 licensed to do all the work required by the RFP because it is a licensed General Engineering
15 Contractor (an “A License” holder) and therefore is already licensed to perform contracting work
16 “in connection with fixed works requiring specialized engineering knowledge and skill, **including**
17 ... **airports and airways.**” 21 GCA § 70106(b) (emphasis added). Because GIAA is a licensed
18 General Engineering Contractor, it does not need any additional “C Licenses” to do work at airports.
19 Any of those licenses are unnecessary and redundant because it is already licensed to do that type of
20 work. Any determination by GIAA that PFM is not licensed to perform work on airports and airways,
21 including on the Guam International Airport Authority is thus contrary to Guam law.

22 **F. REQUIRING BIDDERS TO HOLD ALL CONTRACTOR LICENSES LISTED BY THE**
23 **SOLICITATION AT THE TIME OF BID SUBMISSION LIMITS COMPETITION IN**
24 **CONTRAVENTION OF GUAM LAW.**

25 GIAA’s position that an agreement must be signed at bid submittal and that PFM signed the
26 agreement is baseless. The agreement itself does not set an immediate effective date and, in fact, it
27
28

1 does not. The effective date of the agreement, because none is explicitly stated, is defined as the date
2 the agreement is signed and delivered by the last of the parties to sign and deliver.

3 1.37 EFFECTIVE DATE OF THE AGREEMENT. The date indicated in the
4 Agreement on which it becomes effective, but if no such date is indicated, it means
5 the date on which the Agreement is signed and delivered by the last of the parties
6 to sign and deliver.

7 *See* IFB No. GIAA-C07-FY24, General Provisions, page 4 of 57.

8 Given that the agreement is not effective as of the date the bid is submitted, there is no reason
9 for a contractor to hold all licenses on the date it signs the agreement, particularly if GIAA is insisting
10 on the needless formality of a contractor obtaining a paper license to show it can do work it is already
11 licensed to perform under its existing licenses.

12
13 GIAA's needless and superfluous requirement that a contractor have a paper license for all
14 C License subspecialties for work that it and its subcontractors are already licensed to perform does,
15 in fact, violate the policy that Guam procurement law must be interpreted to "foster effective broad-
16 based competition within the free enterprise system" and to "provide increased economy in territorial
17 activities and to maximize to the fullest extent practicable the purchasing value of public funds of
18 the Territory." *See* 5 GCA §§ 5001(b)(5) and (6). Specifications should further seek to "encourage
19 competition" and "shall not be unduly restrictive." 5 GCA § 5265.

20
21 Rather than following this policy, GIAA rejected bidders who did not submit paper copies of
22 "C Licenses" for work their "A Licenses" and "B Licenses" already authorized them to perform at
23 the time of bid submission. That unduly and unnecessarily limits competition. Requiring licensure
24 at bid submission only enables parties who have gone through the full licensing process to bid, rather
25 than expanding competition to parties who are capable, yet have not yet expended the cost to pay
26 for an additional and needless C License, despite already being licensed to do the work.
27
28

1 Requiring needless and superfluous paper licenses for all C License subspecialties for work
2 that bidders and their subcontractors are already licensed to perform also violates another section of
3 Guam's procurement law that is meant to protection competition by requiring that specifications
4 seek to promote overall economy and encourage competition in satisfying Guam's needs without
5 being unduly restrictive. *See* 5 GCA § 5265 ("All specifications shall seek to promote overall
6 economy for the purposes intended and encourage competition in satisfying Guam's needs, and shall
7 not be unduly restrictive.").

8
9
10 GIAA has failed to provide for increased economy in territorial activities and maximize the
11 purchasing value of local funds in how it has interpreted Guam's procurement law. GIAA's failure
12 to abide by the policies and principals of Guam procurement law and 5 GCA § 5265 are
13 demonstrated by the fact that GIAA now seeks to vigorously defend its award of this contract to a
14 bidder who submitted a bid that is so much higher than the two other bids that were submitted for
15 this IFB:
16

17 Notably, Core Tech International Corporation's bid was nearly three times the amount of the
18 lowest bid. The fact the two lowest bidders, who bid so much lower than the winning bidder, were
19 dismissed on the technical requirement cited by GIAA alone, shows how the IFB was not issued and
20 awarded with the intent to provide increased economy in territorial activities and maximize the
21 purchasing value of local funds or encourage competition in satisfying Guam's needs.
22

23 **G. RULING REQUESTED**

24 PFM respectfully requests that the Office of Public Accountability ("OPA") issue an order
25 declaring the following:
26

27 1. That PFM submitted proof of valid Contractor's license showing that it held licenses
28 in all required categories;

