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8 IN THE OFFICE OF PUBLIC ACCOUNTABILITY
9 PROCUREMENT APPEALS

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11 In the Appeal of

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13 JUAN C. TENORIO, P.E.)

14)
15 Appellant.)

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RESPONDENT GUAM
INTERNATIONAL AIRPORT
AUTHORITY'S MOTION TO DISMISS

Docket No. OPA-PA-11-005

18 Respondent, Guam International Airport Authority ("GIAA"), hereby moves the Office
19 of the Public Auditor ("OPA") to dismiss Appellant's procurement appeal for lack of
20 jurisdiction. Title 2 GAR §12103 sets forth the jurisdictional authority of the OPA and
21 requirement for exhaustion of remedies on the part of the Appellant. Section 12103(a)
22 provides broad power to the OPA who was granted "...the power to review and determine *de*
23 *novo* any matter properly submitted to him or her. ...the public auditor's jurisdiction shall be
24 utilized with the integrity of the procurement process and the purposes of 5 GCA, Chapter 5."

25 Title 2 GAR 12104(b) provides a form for the filing of the appeal and the minimum
26 documentation required. Subdivision 6 of §12104(b) identifies one of the documents as "A
27 copy of prior decisions or determination of the protest, contract disputes, or debarment action
28 that are being appealed; a copy of the request for final decision and any agreement to extend

1 the decision deadline. Simply put, the OPA may only review a bid protest when there is a
2 protest and a decision by the agency on that protest. No decision is attached to the appeal
3 documents filed by the Appellant because no final decision has been made by the
4 Respondent on Appellant's protest. The protest was received by Respondent in a letter dated
5 February 18, 2011. Appellant acknowledges the same at Part III(c) of his appeal to the OPA
6 where he notes, "No response to protest letter dated February 18, 2011." According to 2 GAR
7 §9101(g)(1), the Agency would have to render its decision to that February 18, 2011 protest
8 letter "as expeditiously as possible." The Guam Code provides that bid protests decision
9 should be rendered "promptly." 5 GCA §5425(c). GIAA continues to diligently review
10 Appellant's protest letter of February 18, 2011.

11 The issue of the jurisdiction of the OPA has been raised before in other cases where
12 a prospective appellant has filed a bid protest appeal **before** receiving an agency decision.
13 In the appeal of *Town House Department Stores, Inc. dba Island Business Systems and*
14 *Supplies*, Appellant, Appeal No.: OPA-PA-08-003, the Public Auditor found that the OPA had
15 no jurisdiction because the Agency in that case, Guam Public School System, had not
16 rendered a decision on Appellant's protest. The Public Auditor found out that it did not have
17 jurisdiction to hear the appeal because it did not have before it a final agency decision on the
18 protest.

19 In this case, GIAA has not rendered a final decision on Appellant's bid protest letter of
20 three weeks ago.^{1/} Accordingly, the matter is not properly before the OPA and the OPA does
21 not have jurisdiction to hear it.

22 The Appeal is not properly submitted by the Appellant and is untimely.

23 CONCLUSION

24 The Public Auditor's jurisdiction, in relevant part, is limited in review protest decisions
25 as set forth in 5 GCA §5425(c) and 5 GCA §5425(e). Appellant has not complied with the
26 requirements set forth in Chapter 12 of Title 2 of the Guam Administrative Rules and
27


28 ^{1/} Appellant also acknowledges that his protest was filed with the GIAA on February 18, 2011 through the submittal of Exhibit "K" to Appendix A, Part IV of his protest.

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Regulations. GIAA respectfully requests that the Appeal be dismissed.

Respectfully submitted this 14th day of March, 2011.

TEKER TORRES & TEKER, P.C.

By: 
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Attorneys for Respondent