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BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
HAGÁTÑA, GUAM

7 IN THE MATTER OF K CLEANING ) OPA-PA-13-004  
8 SERVICES )  
9 )  
10 APPELLANT )  
11 ) **MOTION TO DISMISS AN**  
12 ) **APPEAL;**  
13 ) **LACK OF JURISDICTION**  
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13 **COMES NOW** Guam International Airport Authority by and through Counsel Fisher &  
14 Associates, by attorney Thomas J. Fisher, and moves to dismiss this appeal for lack of  
15 jurisdiction.

**\*\*\* Statement of Fact \*\*\***

17 On 25 January 2013 the Guam International Airport Authority (GIAA) issued an  
18 invitation for interested parties to submit bids for a custodial services contract. *See Agency*  
19 *Procurement Record at Tab F*. Appellant received the solicitation on 28 January 2013. Potential  
20 bidders were informed that the time and place for receiving bids was “as described in the bid  
21 documents until 2:00 p.m. . . . at which time and place, all bids will be publicly opened and read  
22 aloud at the GIAA Conference Room.” *Id at Tab F, General Information*. The bid documents  
23 instructed potential bidders that “[s]ealed bids in triplicate will be received at the office of the  
24 GIAA Executive Manager as indicated in the INVITATION FOR BID at which time and place,  
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1 all bids will be publicly opened and read aloud.” *Id at Instruction to Bidders*. Appellant  
2 misunderstood these instructions, brought his bid to the GIAA conference room and not the  
3 Executive Manager’s office, and as a result was late.<sup>1</sup> In accordance with the solicitation, bids  
4 submitted out of time were not accepted.

5 Appellant submitted a “complaint” to the GIAA on 04 April 2013.<sup>2</sup> In the complaint,  
6 Appellant stated,

7 We believe that the confusion regarding the bid turn in location was caused by the  
8 conflicting statements making reference to **time and place** for all three bidders that were  
9 present to turn in their bids at the GIAA Conference room.

10 *Id at Tab I, emphasis in original.*

11 The language complained of was present in the solicitation as originally published and known to  
12 Appellant since January 2013.

13 On 18 April 2013 the GIAA rejected Appellant’s protest. *See Id at Tab J*. Twenty days  
14 later, on 08 May 2013, Appellant filed the instant appeal.

15 **\*\*\* Memorandum of Points and Authority \*\*\***

16 The Jurisdiction of the Public Auditor extends to “any matter properly submitted to her  
17 or him.” *5 Guam Code Ann. §5703*. For an appeal of an agency decision to be properly  
18 before the Public Auditor, it must be made within fifteen days of appellant’s receipt of the  
19 agency decision. Here the appeal was filed after the fifteen day deadline and the matter is not  
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21 \_\_\_\_\_  
22 <sup>1</sup> The bid receipt and opening date was ultimately moved to 29 March 2013 at 2:00 p.m. *See*  
23 *Addendum D to Solicitation at Tab F*.

24 <sup>2</sup> Although lacking the statutory hallmarks of a protest, the GIAA treated the letter as a protest  
25 in accordance with *In the Appeal of Eons Enterprises, Inc., OPA-PA-10-003*, but reserved its  
right to make objection. *See Agency Procurement Record at Tab J*.

1 properly before this Office.

2 Appellant argues that the GIAA's failure to advise him that he had a right to  
3 administrative and judicial review leaves the time for appeal open. *See Appeal at Attachment*  
4 *1*. It is true that the GIAA failed to advise him of that right but that does not result in a failure  
5 of decision. *See In the Appeal of Eons Enterprises, Inc., OPA-PA-10-003*, "Here, although  
6 GCC failed to advise the Appellant of its right to administrative and judicial review, GCC did  
7 deny Appellant the re-evaluation of the bids Appellant was seeking and GCC stated the  
8 reasons for its denial of said relief. Further, GCC issued its decisions promptly. Thus, the  
9 Hearing Officer finds that GCC's May 10, 2010 Letter was GCC's decision to deny  
10 Appellant's May 3, 2010 protest." *Id at pp 5-6*. Thus a decision issued, Appellant's protest  
11 was denied by the GIAA, and Appellant failed to timely appeal the decision.  
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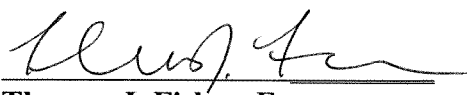
13 Should the Auditor determine however that the failure to advise Appellant of  
14 administrative remedies results in a failure of the agency to issue a decision, this too deprives  
15 the Public Auditor of jurisdiction. *See In the Appeal of Town House Department Stores v.*  
16 *IBSS, OPA PA- 08-003*, "This matter is not ripe for the Public Auditor's review because  
17 GPSS has not rendered a decision on IBSS's December 4, 2007 protest . . . Thus without a  
18 GPSS decision of IBSS's December 4, 2007 protest, this matter is not properly before the  
19 Public Auditor and the Public Auditor does not have jurisdiction to hear it."  
20

21 As has been seen, Appellant filed his protest on 04 April 2013. This was well over  
22 thirty days from the time he knew (or should have known) of the language in the solicitation  
23 of which he complains. Protests must be made "in writing within fourteen (14) days after  
24 such aggrieved person knows or should know of the facts giving rise thereto." *5 Guam Code*  
25 *Ann. §5425(a)*. From the time Appellant received the solicitation, and assuming merit to his

1 argument, he was aware of an ambiguity which unresolved, was a pitfall to potential bidders.  
2 Because he did nothing to clarify his understanding, and did nothing to remedy a solicitation  
3 which he deems flawed within the mandatory fourteen day period, he cannot now appeal to  
4 the Public Auditor. See *Town House Department Stores v. IBSS, supra*, “the threshold issue  
5 in this matter is whether IBSS’ December 4, 2007, protest was timely.”

6 **WHEREFORE** Agency GIAA prays the Public Auditor dismiss the appeal.  
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9 **FISHER & ASSOCIATES**

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12 **Thomas J. Fisher, Esq.**  
13 **For GIAA**

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