



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

PROCUREMENT APPEALS

IN THE APPEAL OF,
JUAN C. TENORIO, P.E.

Appellant

) **APPEAL NO: OPA-PA-11-005**
)
) **ORDER GRANTING PURCHASING**
) **AGENCY'S MOTION TO DISMISS**
) **APPEAL**
)
)

THIS MATTER came before the Public Auditor pursuant to Purchasing Agency GUAM INTERNATIONAL AIRPORT AUTHORITY's (Hereafter "GIAA") March 14, 2011 Motion to Dismiss. After reviewing said motion and the appeal filed on March 4, 2011, by Appellant JUAN C. TENORIO, P.E., (Hereafter "TENORIO") regarding GIAA's failure to issue a decision on TENORIO's February 18, 2011 Protest concerning GIAA-RFP-FY98-08-02 (Construction Management Services for Construction of Parallel Taxiway), the Public Auditor hereby FINDS and ORDERS the following:

1. The Public Auditor finds that she does not have the jurisdiction to hear TENORIO's appeal at this time because GIAA has not rendered a decision on TENORIO's February 18, 2011 protest. The Public Auditor has the power to review and determine *de novo* any matter properly submitted to her. 5 G.C.A. §5703 and 2 G.A.R., Div. 4, Chap. 12, §12103(a). The Public Auditor has the jurisdiction to hear an appeal of a purchasing agency's written decision on a protest concerning the purchasing agency's method of source selection, solicitation, or award of a contract. 5 G.C.A. §5425(e), and 2 G.A.R., Div. 4, Chap. 12, §12201(a). Here, as stated above, TENORIO's appeal is based on the fact that GIAA has not rendered a Decision on TENORIO's February 18, 2011 protest. Thus, without a GIAA decision on TENORIO's February 18, 2011 protest, this matter is not properly before the Public Auditor and the Public Auditor does not have the jurisdiction to hear it. Further, a copy of the purchasing agency's

1 protest decision is a required part of the Notice of Appeal and an appeal lacking the protest
2 decision being appealed is subject to dismissal. 2 G.A.R., Div. 4, Chap. 12, §12104(b)(6) and
3 (8). Thus, as there is no decision on TENORIO's February 18, 2011 protest, pursuant to 2
4 G.A.R., Div. 4, Chap. 12, §12104(b)(8), GIAA's Motion to Dismiss is hereby GRANTED, and
5 this matter is hereby dismissed without prejudice.

6 2. The Public Auditor finds that she has the authority to compel GIAA to produce the
7 Decision for TENORIO's February 18, 2011 Protest. The Public Auditor shall have the power
8 to compel the production of documents by any employee of the Government of Guam. 5 G.C.A.
9 §5703 and 2 G.A.R., Div. 4, Chap. 12, §12103(a). Further, the Public Auditor shall use this
10 authority to promote the integrity of the procurement process and purposes of 5 G.C.A. Chapter
11 5. *Id.* Here, however, the Public Auditor declines to compel the production of the
12 aforementioned decision because the Public Auditor finds that GIAA had less than thirty (30)
13 days to review and consider TENORIO's protest before TENORIO's appeal in this matter was
14 filed. GIAA is hereby reminded that Guam Procurement Law and Regulations require DPW to
15 decide TENORIO's February 17, 2011 protest. If a protest is not resolved by mutual agreement,
16 the head of a purchasing agency, or his or her designee shall **promptly and expeditiously** (bold
17 emphasis added) issue a decision in writing stating the reasons for the action taken, informing the
18 protestant of its right to administrative and judicial review, and a copy of such decision shall be
19 mailed or otherwise furnished immediately to the protestant, and any other party intervening. 5
20 G.C.A. §5425(c) and (d) and 2 G.A.R., Div. 4, Chap. 9, §9101(g). Thus, GIAA is required to
21 issue a decision on TENORIO's protest promptly and expeditiously. The Public Auditor finds
22 that GIAA will meet this standard if it renders its decision no later than 5:00 p.m. on March 31,
23 2011.

24 3. This is a Final Administrative Decision. The Parties are hereby informed of their right
25 to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance
26 with Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final
27 Administrative Decision. 5 G.C.A. §5481(a). A copy of this Decision shall be provided to the
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2 parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made
3 available for review on the OPA Website www.guamopa.org.

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5 **SO ORDERED** this 15th day of March, 2011.
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11 DORIS FLORES BROOKS, CPA, CGFM
12 PUBLIC AUDITOR
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