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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: 06-21-17
TIME: 3:40 AM PM BY: WJ
FILE NO OPA-PA: 17-007

6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**
7 **HAGÁTÑA, GUAM**

8 IN RE THE APPEAL OF) OPA-PA-17-007
9 MEGA UNITED CORP. LTD.)
10)
11) **MOTION TO DISMISS AN**
12) **APPEAL and**
13) **STAY AN ORDER**
14)

15 ***** Motion *****

16 **COMES NOW** the Guam Economic Development Authority (GEDA) and moves
17 to dismiss the instant appeal for want of jurisdiction in the Office of Public
18 Accountability (OPA).

19 ***** Statement of Fact *****

20 1. On 15 June 2017 Appellant Mega United Corp. Ltd.(MUC) filed the instant
21 Appeal. According to MUC's transmittal letter, the Appeal is filed pursuant to 5
22 Guam Code Ann. §5706. *See Transmittal Letter, MUC to OPA, 15 June 2017.*
23 Subsequent to the filing of the Appeal, the Office of Public Accountability ordered
24 GEDA to file and submit copies of the procurement record and agency report to
25 appropriate parties. *See OPA Letter, 16 June 2017 at p.1.*

1 2. In that Appeal, MUC alleged the Appeal is made “from a decision on
2 Contract or Breach of Contract Controversy excluding claims of money owed to or
3 by the Government.” *See Notice of Appeal (hereinafter “Appeal”), OPA-PA-17-*
4 *007, at p.1.*

5 3. In that Appeal, MUC requests “that the Office of Public Accountability
6 approve Mega United’s Request for Adjustment of Contract Price due to
7 Prolonged Delay in the amount of \$460,081, in addition to attorney’s fees and
8 interest.” *Appeal at p.3.*

9 4. In that Appeal, MUC states “[o]n April 17, 2017, counsel for Mega United
10 received GEDA’s response to Mega United’s request for a final decision. GEDA
11 denied Mega United’s request, based on GEDA’s failure to respond previously,
12 arguing that GEDA’s failure to communicate in any way constituted notice to
13 Mega United that it’s (sic) request had been denied, and that Mega United’s right
14 to appeal to the Public Auditor was barred.” *Appeal at p.2.*

15 5. In fact, counsel for MUC received GEDA’s response on 13 April 2017. *See*
16 *Attachment A filed herewith.*

17 6. Sixty four (64) days following receipt of GEDA’s decision, MUC filed its
18 appeal.

19 ***** Memorandum of Points and Authority *****

20 Objections to the jurisdiction of the OPA shall be promptly made. *See 2*
21 *Guam Admin. R. & Reg 12104(c)(9)*, “Any objection or motion addressed to the
22 jurisdiction of the Public Auditor shall be promptly filed.”

23 The jurisdiction of the Office of Public Accountability extends to
24 procurement appeals but “[t]he Public Auditor shall not have jurisdiction over
25 disputes having to do with money owed to or by the government of Guam.” 5

1 *Guam Code Ann. §5703, see also 2 Guam Admin. R. & Reg. 12103, “The Public*
2 *Auditor shall not have jurisdiction over disputes having to do with money owed*
3 *to or by the government of Guam” and Rule 12113, “Disputes having to do with*
4 *money owed to or by the government of Guam shall not be submitted.”*

5 Here, MUC contends that it is owed more money because alleged delays
6 by GEDA or its representatives increased the contract time by more than sixty
7 (60) days, resulting in damage of over \$460,081 plus attorney’s fees and
8 interest. *See Appeal at p.2.* This is plainly a dispute regarding money allegedly
9 owed by the Government. To argue otherwise is sophism. The OPA is without
10 jurisdiction in this matter and the appeal should be dismissed.

11 Additionally, appeals filed by vendors more than sixty days after receipt
12 of an agency decision are untimely. *See 5 Guam Code Ann. §5706(a) and (b),*
13 *“(a) Scope. This § 5706 applies to a review by the Public Auditor of a decision*
14 *under § 5427 of this Chapter. (b) Time Limitation on Filing an Appeal. The*
15 *aggrieved contractor shall file his/her appeal with the Public Auditor within*
16 *sixty (60) days of the receipt of the decision or within sixty (60) days following*
17 *the failure to render a timely decision as provided in § 5427 of this Chapter.”*

18 Here the Appeal was filed more than sixty days after MUC received notice of
19 the Agency decision. This untimely filing also deprives the OPA of jurisdiction.

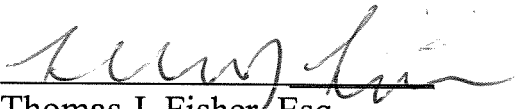
20 Orders issued by tribunals lacking jurisdiction are void. The OPA’s lack
21 of subject matter jurisdiction renders orders issued by it void. *See U.S. Catholic*
22 *Conference v. Abortion Rights Mobilization, Inc., 487 U.S. 72 (1988), “It*
23
24
25

1 follows that if a district court does not have subject-matter jurisdiction over the
2 underlying action, and the process was not issued in aid of determining that
3 jurisdiction, then the process is void and an order of civil contempt based on
4 refusal to honor it must be reversed.”

6 **WHEREFORE** the Guam Economic Development Authority Prays for relief as
7 follows;

- 9 1. Stay an order to produce a procurement record and agency report
10 pending resolution of the issue of jurisdiction.
- 11 2. Dismiss this Appeal for want of jurisdiction.

13 **FISHER & ASSOCIATES**

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15 _____
16 Thomas J. Fisher, Esq.

17 Guam Economic Development Authority
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Exhibit A

From: "Jha'Aunie Leon Guerrero" <jleonguerrero@investguam.com
<<mailto:jleonguerrero@investguam.com>> >
Date: April 13, 2017 at 8:37:11 AM GMT+10
To: <visosky@guamlawoffice.com <<mailto:visosky@guamlawoffice.com>> >
Cc: "'Diego Mendiola'" <dmendiola@investguam.com <<mailto:dmendiola@investguam.com>>
>, <fisherassociates@teleguam.net <<mailto:fisherassociates@teleguam.net>> >
Subject: Mega United Corporation

Hafa Adai,

Please see attached letter from the Guam Economic Development Authority regarding your letter dated March 2, 2017 on Mega United Corporation.

Original letter will be post mailed.

Si Yu'os Ma'ase,

Jha'Aunie Leon Guerrero
Program Coordinator, Real Property Division

EDDIE BAZA CALVO
Governor of Guam
I Maga'Lahen Guahan

RAY TENORIO
Lt. Governor of Guam
I Segundo Na Maga'lahen Guahan



JAY ROJAS
Administrator
Adminastradot

MANA SILVA TAIJERON
Deputy Administrator
Sigundo Na Adminastradot

Aturidád Inadilánton Ikunumihan Guahan

April 10, 2017

Mr. Jon A. Visosky
Dooley Roberts Fowler & Visosky LLP
865 S. Marine Corps Dr., Ste. 201
Tamuning, GU 96913

RE: Letter dated 02 March 2017

Hafa Adai Mr. Visosky,

Thank you for your letter of 02 March 2017. In that letter, you report your client Mega United Corp. "demands a final decision on its pending claim for compensation and does so pursuant to 5 Guam Code Ann. §5427. See Letter, Visosky J., 02 March 2017. GEDA understands that "pending claim" to be one asserted on 02 February 2016 and referencing a "request for adjustment of contract price" dated 08 October 2014¹. See letter, Xu N., 02 February 2016. As evidenced by your letter, it appears that GEDA did not timely respond to your claim of February 2016 and Mega United was thus free to treat this silence as an adverse decision. See 5 Guam Code Ann. §5427(f). As you know, such a decision was final and conclusive, unless fraudulent, or Mega United appealed administratively to the Public Auditor in accordance with § 5706 of that same title. See *id* at §5427(e).

In relevant part, section 5706 states " (a)Scope. This § 5706 applies to a review by the Public Auditor of a decision under § 5427 of this Chapter. (b)Time Limitation on Filing an Appeal. The aggrieved contractor shall file his/her appeal with the Public Auditor within sixty (60) days of the receipt of the decision or within sixty (60) days following the failure to render a timely decision as provided in § 5427 of this Chapter." 5 Guam Code Ann. §5706. GEDA is not aware that Mega United filed any appeal with the Public Auditor. Many more than sixty days have now elapsed and the matter is closed. Thank you for your attention.

Sincerely,

Cc: Tom Fisher and Associates

¹ Please note that the 08 October 2014 request is invalid. See *Project Manual at Vol. I, Section 0700, ¶10.*



**DOOLEY ROBERTS FOWLER & VISOSKY LLP
ATTORNEYS AT LAW**

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Of Counsel:
MELINDA C. SWAVELY

Writer's Direct Email:
visosky@guamlawoffice.com

March 2, 2017

VIA HAND DELIVERY
and U.S. MAIL

Jay Rojas
Administrator
Guam Economic Development Authority
590 S. Marine Corps Drive
Suite 511, ITC Building
Tamuning, Guam 96913


Demand by Mega United Corp.; GEDA IFB 14-002

Dear Mr. Rojas:

This office represents Mega United Corp. ("Mega United"). Pursuant to 5 GCA § 5427 Mega United demands a final decision on its pending claim for compensation.

Sincerely,

Dooley Roberts Fowler & Visosky LLP



Jon A. Visosky

cc: Tom Fisher, fisherassociates@teleguam.net

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