

Suite 401 DNA Building  
238 Archbishop Flores St.  
Hagåtña, Guam 96910



# FAX

<b>To:</b>	<b>Mr. John Nathan Denight</b> <b>President &amp; CEO</b> Guam Visitors Bureau 401 Pale San Vitores Road Tumon, Guam 96913 Phone: (671) 646-5278 Fax: (671) 646-3917/646-8861	<b>From:</b>	<b>Benjamin J.F. Cruz</b> <b>Public Auditor</b> Office of Public Accountability
		<b>Pages:</b>	9 (including cover page)
<b>CC:</b>	<b>Mr. Luis E. Bustamante</b> <b>President</b> Appellant: JJ Global Services 215 Rojas Street, Suite 126 Harmon Industrial Park Tamuning, Guam 96913 Tel: (671) 632-1179 Fax: (671) 632-3550	<b>Date:</b>	January 3, 2019
		<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 208 (671) 472-7951

**Re:** OPA-PA-19-001 Notice of Receipt of Appeal

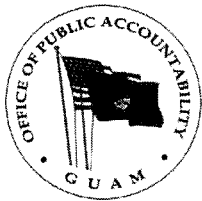
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Thank you,  
Jerrick Hernandez  
Auditor  
jhernandez@guamopa.com

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## OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910  
Phone: (671) 475-0390 / FAX: (671) 472-7951

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January 3, 2019

Mr. Jon Nathan Denight  
President & CEO  
Guam Visitors Bureau  
401 Pale San Vitores Road  
Tumon, Guam 96913

VIA FACSIMILE: (671) 646-8861

Re: Notice of Receipt of Appeal – OPA-PA-19-001

Dear Mr. Denight,

Please be advised that JJ Global Services (hereinafter referred to as “JJ Global” filed an appeal with the Office of Public Accountability (OPA) on January 2, 2019, regarding the Guam Visitors Bureau’s response to JJ Global’s protest relative to Invitation for Bid No. GVB IFV 2018-001, Tumon Landscape Maintenance. OPA has assigned this appeal case number OPA-PA-19-001.

Immediate action is required of GVB pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at [www.opaguam.org](http://www.opaguam.org). The first six pages of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

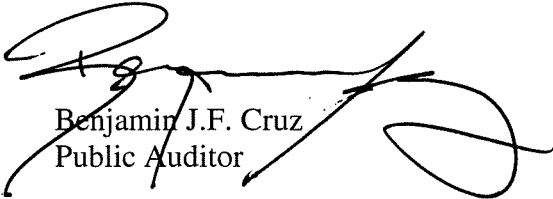
Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Thursday, January 10, 2019**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Thursday, January 17, 2019**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to Joeten. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that GVB provide one

original and two copies of the said record, which will be distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208 or [jhernandez@guamopa.com](mailto:jhernandez@guamopa.com) should you have any questions regarding this notice.

Sincerely,



Benjamin J.F. Cruz  
Public Auditor

Enclosure: First Six Pages of the Notice of Appeal – OPA-PA-18-008

Cc: Luis E. Bustamante, President of JJ Global



DATE: 01-02-19

TIME: 4:30  AM  PM BY: JJ

FILE NO OPA-PA: 19-001

**PROCUREMENT APPEAL  
IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Appeal of

JJ Global Services,

Appellant.

**DOCKET NO. OPA-PA-19-001**

JJ Global Services (“JJ”) hereby appeals a decision rendered by the Guam Visitors Bureau (“GVB”), an agency of the Government of Guam, on December 18, 2018, denying the Bid Protest raised by JJ in GVB IFB 2018-001 regarding Tumon Landscape Maintenance.

**APPELLANT INFORMATION**

Name: JJ Global Services

Mailing Address: PO Box 217881, GMF Barrigada Guam 96921

Business Address: 215 Rojas St. Suite 126, Harmon Industrial Park, Tamuning, 96913

**APPEAL INFORMATION**

A. Purchasing Agency: Guam Visitors Bureau

B. Contract No: GVB IFB 2018-001 (Tumon Landscape Maintenance)

C. Date of Contract: Solicitation issued on July 19, 2018

D. This appeal is made from the Guam Visitors Bureau denial of JJ’s Protest provided to JJ Global on December 18, 2018.

E. The name of competing bidders known to appellant are: LMS and Canton Construction.

### RELEVANT PROCEDURAL HISTORY

The Key Events in this Procurement Protest are as follows:

- 07/19/18 The IFB was announced. The IFB is attached as **Attachment A**.
- 08/20/18 JJ submitted its bid, bids were opened, and its bid was the lowest.
- 11/7/18 GVB delivers to JJ Global a notice of non-responsibility. The letter is dated 10/31/18, but was kept by GVB away from JJ Global for a week. GVB's letter about non-responsibility is attached as **Attachment B**.
- 11/19/18 JJ Global lodge Procurement Protest with GVB. JJ's Protest is attached as **Attachment C**.
- 12/18/18 JJ Global receives response to JJ Global's protest letter. GVB rejected the merits of JJ's Protest. GVB's response is attached as **Attachment D**.

#### IV. STATEMENT OF GROUNDS FOR APPEAL

GVB's Claim that JJ Global Services is an Non-responsible bidder is without merit.

GVB Claimed that JJ Global Services is a Non-responsible bidder due to past performance on four prior jobs: The Guam Power Authority, Guam Waterworks Authority, The Guam International Airport Authority, and the Department of Parks and Recreation. GVB's response to JJ's Protest of November 19, 2018 provided no substantive response to the information provided by JJ Global Services in the protest. To the contrary, GVB maintained its determination that "JJ Global was not a responsible bidder." GVB's ignoring of JJ's points in response to the responsibility determination was an error. Furthermore, GVB also did not consult with the agency personnel who had direct involvement and oversight over JJ Global Services' work at the various agencies. More, all invoices submitted to GPA, GIAA, DPR, and GWA have been paid for the satisfactory work that was completed. Simply put, GVB concocted stories of agency dissatisfaction by consulting with unknown persons about JJ Global Services, and did so by also avoiding

investigation with those government employees with the most direct oversight over JJ' prior work.

A summary of the points ignored by GVB follows:

**The GPA Contract.**

GVB falsely claimed that JJ Global Services' contract with GPA was terminated 3 months prior to expiration. The contract was not terminated. The contract was put on hold 3 months prior the expiration due to the three (3) purchase orders blanket amounts have exhausted, pending amendments in which we later received. No letter of termination was ever issued by GPA. GVB also failed to consult with the project point of contact at the agency. Purchase orders continued to be issued, and JJ Global Services was fully paid on the GPA contract.

**GWA Contract**

GVB claims that JJ Global Services work for GWA work was not satisfactory. GWA never made any such inspection or expression of displeasure to JJ Global Services, and the company was fully paid on the GWA Contract. GVB also failed to consult with the project point of contact at the agency.

**DPR Contract**

No individual who had direct oversight over the DPR contract with JJ Global Services ever expressed concern or transmitted any such concern to JJ Global Services. The company was also fully paid on the DPR contract. GVB also failed to consult with the project point of contact at the agency.

**GIAA Contract**

GVB claims that GIAA found discrepancies with JJ Global Services' performance. GIAA had not previously relayed significant concern over such issues to JJ Global Services, and GVB also failed to consult with the project point of contact at the agency. The company was also fully paid on the DPR contract.

GVB's has prejudiced JJ Global Services by secretly executing a contract with LMS before informing JJ Global Services of the non-responsibility finding in order to avoid the statutory stay of procurement.

Physical Address: 215 Rojas Street, Suite 126 Harmon Industrial Park, Tamuning Guam, 96913  
Mailing Address: PO Box 217881, GMF Barrigada Guam 96921  
Tel: (671) 632-1179 Fax: (671) 632-3550  
Email: [jjg@teleguam.net](mailto:jjg@teleguam.net)

JJ Global Services' timely protest triggered the automatic stay mandated by 5 GCA §5425(g). 5 GCA §5425(g) declares that "in the event of a timely protest... the Territory shall not proceed further with the solicitation of with the award of the contract prior to final resolution of such protest, and any such further action is void, unless there is a written determination by the Chief Procurement Officer with the written concurrent of the head of the purchasing agency and the Attorney General, that the award of the contract without delay is necessary to protect the substantial interests of the Territory. . . ." 5 GCA § 5425(g)(1). In previous decisions, the OPA has made it clear to the agencies that the automatic stay is triggered by a timely filed protest, and remains in place during the entire protest process, including any appeals to the courts of Guam. *See In the Appeal of JMI Edison, Decision, OPA-PA-13-009, 5 (November 27, 2013).*

Here, GVB, in an effort to circumvent the §5425(g) stay, colluded with LMS to negotiate, award and execute a contract **before informing other bidders that a selection had been made.** GVB fails to address this fact. 2GAR, Division 4, §3109 (q) requires that "Written notice of award shall be sent to the successful bidder. In procurement over \$25,000, each unsuccessful bidder shall be notified of the award. Notice of award shall be made available to the public." Here, GVB specifically chose not to inform and provide such written notice the JJ Global Services. An order from the OPA confirming that the automatic stay is in effect and preventing GVB from further violations of the automatic stay is necessary to protect JJ Global Services' rights and to protect the integrity of the procurement system where an agency, such as GVB, chooses to avoid its notice requirements to unsuccessful bidders.

GVB has completely avoided addressing the obvious bias shown to favor the incumbent contractor, LMS.

GVB rejected the any response to the substantive allegations raised in JJ Global Service's protest regarding a biased procurement process designed to favor incumbent contractor LMS.

GVB provides no response regarding its lack of communication to JJ, or the fact that the solicitation was delayed to keep work flowing to incumbent LMS and allow time for GVB to concoct a determination of non-responsibility against JJ. GVB's failure to address this bias as shown in the record of procurement timelines and communication was an error.

**D. Relief Requested**

Appealing bidder JJ Global Services Requests a ruling from the OPA as follows:

1. A ruling that GVB's determination that JJ was a non-responsible bidder was without merit or legal support, and a determination that JJ Global Services is a responsible bidder.
2. A determination that GVB cannot avoid the protections of 5 GCA 5425(g) by discussing and entering into a contract with a selected offeror prior to informing other offerors that they have not been selected for award;
3. For a ruling that all offerors responding to a Request for Proposal or other similar procurement process be informed at the same time, and also be informed that a selection was made by an Agency;
4. That the ranking of LMS as the highest ranked responsible offeror for the IFB be set aside;
5. A declaration that the Contract negotiated and executed between GVB and LMS be declared void *ab initio* and set aside;
6. A determination that as the lowest priced responsible offeror, GVB should immediately begin enter into a contract for the IFB with JJ Global Services;
7. For an award of reasonable a fees and costs of this protest and appeal; and
8. For such other relief that the OPA may determine is just and proper.

**V. DECLARATION RE COURT ACTION**

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action



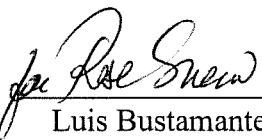
on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

### VERIFICATION

I, Luis Bustamante, am the president of Appellant JJ Global Services, and I am authorized to make this verification. I have read the foregoing Notice of Appeal and, based on information and belief and to the best of my knowledge, the facts stated therein are true and correct. I declare under penalty of perjury under the laws of Guam that the foregoing is true and correct.

This verification was executed on the Jan 3, 2019.

By:   
Luis Bustamante

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Thank you,  
 Jerrick Hernandez  
 Auditor  
[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)

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