



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor
**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF

MAEDA PACIFIC CORPORATION,
Appellant.

Docket No. OPA-PA-15-008

DECISION AND ORDER

Before the Office of Public Accountability (“OPA”) are a Motion to Dismiss for Lack of Jurisdiction and for Recusal, filed by Guam Solid Waste Authority (“GSWA”) on September 1, 2015, and a Verified Motion for Leave to Submit Appellant’s Opposition to Motion to Dismiss, filed by Appellant Maeda Pacific Corporation (“MPC”) on September 21, 2015. The Public Auditor finds that no oral argument is necessary on the motions, and hereby vacates the motion hearing set for October 23, 2015. The Public Auditor hereby makes the following decision and order on the motions, addressing first MPC’s Verified Motion for Leave to Submit Appellant’s Opposition to Motion to Dismiss.

1. MPC’s Verified Motion for Leave to Submit Appellant’s Opposition to Motion to Dismiss.

MPC requests leave to submit its opposition to GSWA’s Motion to Dismiss for Lack and Jurisdiction and for Recusal. The deadline for MPC to file an opposition to GSWA’s motion was September 17, 2015, and, by that date, no opposition was filed. MPC states in part that an opposition was not timely filed due to its counsel’s father passing away just days earlier. MPC

1 requests permission to file its opposition after the deadline, on September 21, 2015, citing good
2 cause and lack of prejudice to GSWA.

3 The Public Auditor agrees with MPC that good cause for granting leave exists and that such
4 leave does not prejudice GSWA, as GSWA was able to and did file a timely reply to the opposition
5 and GSWA in its reply does not oppose the motion for leave. Based on the foregoing, the Public
6 Auditor GRANTS MPC's Verified Motion for Leave to Submit Appellant's Opposition to Motion
7 to Dismiss.
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9 **2. GSWA's Motion to Dismiss for Lack of Jurisdiction and for Recusal.**

10 In its motion, GSWA seeks dismissal of this appeal for lack of jurisdiction and recusal or
11 disqualification of the Public Auditor. GSWA argues that the OPA lacks jurisdiction over this
12 appeal because the appeal is a dispute having to do with money owed to or by the government of
13 Guam.
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15 The Public Auditor has jurisdiction over "any matter properly submitted to her or him. The
16 Public Auditor shall not have jurisdiction over disputes having to do with money owed to or by the
17 government of Guam. ..." 5 G.C.A. § 5703; 2 G.A.R. 4 § 12103(a).

18 The Notice of Appeal filed by MPC on August 17, 2015, states that this is an appeal made
19 from a "Decision on Contract or Breach of Contract Controversy (Excluding claims of money owed
20 to or by the government)." In the Statement of Issues contained in the Notice, MPC states in part:
21

22 Appellant asserts that it is owed Five Hundred Six Thousand Four Hundred Eighty-
23 Three Dollars and Thirty-Nine Cents (\$506,483.39). GSWA has assessed Six
24 Hundred Sixty-Three Thousand Dollars (\$663,000.00) as liquidated damages and
25 asserts that it is owed One Hundred Fifty-Six Thousand Five Hundred Sixteen
26 Dollars and Sixty-One Cents (\$156,516.61), the difference between the amount
27 owed to Appellant and the assessment of liquidated damages by GSWA.

1 Appellant's Appeal is over the validity and enforceability of paragraph IV
2 of the Contract, the liquidated damages provision, executed between the parties on
3 November 1, 2012. The liquidated damages provision provides for liquidated
4 damages in the sum of Three Thousand Three Hundred Dollars (\$3,300.00) per day
5 for breach of the Contract for failing, neglecting and refusing to complete the work
6 in the time specified under the Contract. Under that provision, liquidated damages
7 are assessed for each calendar day that the Contract is in default.

8 On page 7 of MPC's protest letter to GSWA, dated June 19, 2015, MPC states in part that it "seeks
9 a final resolution of its outstanding invoice and GSWA's assessment of Liquidated Damages."
10 MPC also disputed the validity and enforceability of the liquidated damages clause of the contract.
11 In GSWA's decision letter dated July 19, 2015, GSWA demanded that MPC make an immediate
12 payment to GSWA of \$156,516.61 towards \$663,000.00 in liquidated damages.

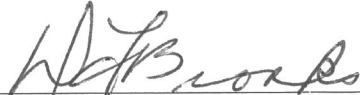
13 Considering the notice of appeal, including the documents provided in support thereof, it is
14 clear that this appeal is a dispute having to do with money owed to or by the government of Guam.
15 As such, the OPA lacks jurisdiction over this appeal. Accordingly, the Public Auditor GRANTS
16 GSWA's motion to dismiss this appeal for lack of jurisdiction and hereby ORDERS this appeal
17 DISMISSED.
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19 As the OPA lacks jurisdiction over this appeal, GSWA's request for the Public Auditor's
20 recusal or disqualification is DENIED as MOOT.

21 This is a Final Administrative Decision. The Parties are hereby informed of their right to
22 judicial review in the Superior Court of Guam of a Decision of the Public Auditor under 5 G.C.A.
23 Chapter 5, Article 9 (Legal and Contractual Remedies) of the Guam Procurement Law. In
24 accordance with 5 G.C.A. § 5481(a), such action shall be initiated within fourteen (14) days after
25 receipt of a Final Administrative Decision. A copy of this Decision shall be provided to the Parties
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1 and their respective attorneys, in accordance with 5 G.C.A. § 5702, and shall be made available for
2 review on the OPA website at www.opaguam.org.

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4 SO ORDERED this 9th day of October, 2015.

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7 DORIS FLORES BROOKS, CPA, CGFM
8 Public Auditor of Guam
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