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Appeal from Decision on Contract or Breach of Contract Controversy

June 15, 2017

Via Hand Delivery

The Office of Public Accountability - Guam
Suite 401, Pacific News Building
238 Archbishop Flores Street
Hagåtña, Guam 96910
Tel: 475-0390
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DATE: 06.15.17
TIME: 3:50 AM PM BY: JW
FILE NO OPA-PA: 17-007

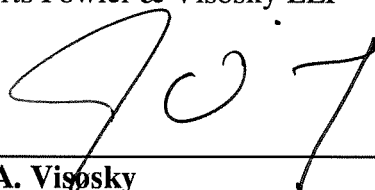
Re: Transmittal Letter

Dear Madam Public Auditor:

Pursuant to 5 GCA § 5706 please find the appeal of Mega United Corp. Ltd., of the denial of its Request for Adjustment of Contract Price due to Prolonged Delay, in connection with the Contract By and Between Mega United Corp., Ltd. and Guam Economic Development Authority, for the Construction of the Farmers' Cooperative Association of Guam Facility and the Relocation of the Dededo Flea Market (GEDA IFB No. 14-002), transmitted with this letter.

Sincerely,

Roberts Fowler & Visosky LLP



Date: June 15, 2017

By: _____

Jon A. Visosky

Attorneys for Mega United Corp. Ltd.

Enclosures

ORIGINAL

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Attorneys for Appellant
Mega United Corp. Ltd.

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of
Mega United Corp. Ltd.,

Appellant.

Docket No. OPA-PA 17-007

Notice of Appeal

Appellant Information:

Mega United Corp. Ltd. ("Mega United")
C/O: Mr. Zhang Zumin
P.O. Box 8620
Tamuning, Guam 96931
Tel.: 689-3293
Fax: 734-0098

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Appeal Information:

- A) Purchasing Agency: Guam Economic Development Authority ("GEDA").
- B) Contract By and Between Mega United Corp., Ltd. and Guam Economic Development Authority, for the Construction of the Farmers' Cooperative Association of Guam Facility and the Relocation of the Dededo Flea Market (GEDA Invitation for Bid No. 14-002 for the Construction of the Farmers' Cooperative Association of Guam Facility and the Relocation of the Dededo Flea Market).
- C) Decision being appealed is the GEDA April 10, 2017 (received by Mega United April 17, 2017) denial of Mega United's demand for a final decision on its Request for Adjustment of Contract Price due to Prolonged Delay.
- D) Decision on Contract or Breach of Contract Controversy
(Excluding claims of money owed to or by the government)
- E) Names of Competing Bidders, Offerors, or Contractors known to Appellant: None.

ORIGINAL

Form and Filing:

1. On or around May 1, 2014 the Governor approved the Contract By and Between Mega United Corp., Ltd. and Guam Economic Development Authority, for the Construction of the Farmers' Cooperative Association of Guam Facility and the Relocation of the Dededo Flea Market (the "Contract"). The Contract is attached as **Exhibit 1**.

2. Under the Project Manual for Farmers' Co-Op & Dededo Flea Market Relocation, (the "Project Manual") for example, Mega United "shall be permitted an adjustment in the Contract Price only if any delays either individually or cumulatively, cause the Contract Time to be increased by more than sixty (60) days." Project Manual Vol. I: 0700-49, section 12.F.3 (underline added). The Project Manual Vol. I is attached as **Exhibit 2**. See also Contract Articles 11 and 12.

3. Delays caused by GEDA or its representative Program Management Office ("PMO") increased the Contract Time by more than sixty (60) days, resulting in damages to Mega United of over \$460,081 plus attorney's fees and interest. See correspondence between Mega United and its attorneys, and GEDA and its attorneys, attached as **Exhibit 3**.

4. Some of GEDA's and it's PMO's acts and omissions causing the delays include:

a. Design Deficiency. The public water system could not handle the Guam Fire Department water flow requirements in the project area. GEDA was aware of this deficiency but failed to address the issue, thereby forcing Mega United to shoulder the resulting permitting delays.

b. Leadership Dispute within the Board of Farmers' Co-Op. A Board of Farmers Co-Op leadership dispute resulted in indecisions by GEDA concerning which critical options should be exercised for actual construction. This dispute had to be brought to the Superior Court of Guam for a final judgment. Mega United Corp. again had to shoulder all damages caused by the delay.

c. The Poor Performance of GEDA's PMO. CHA Company, retained by GEDA as the PMO, initially subcontracted TCM to handle the project. CHA Company terminated TCM's subcontract in February of 2014 and assigned its own engineer Galvin Thomas to the project. After delays resulting from the additional time necessary for Mr. Thomas to familiarize himself with the project, Mr. Thomas then overruled all previous arrangement made between TCM and Mega United Corp., demanding new terms from Mega United.

5. On April 17, 2017, counsel for Mega United received GEDA's response to Mega United's request for a final decision. GEDA denied Mega United's request, based on GEDA's failure to respond previously, arguing that GEDA's failure to communicate in any way constituted notice to Mega United that it's request had been denied, and that Mega United's right to appeal to the Public Auditor was barred. Mega United's demand for a final decision, and GEDA's response is attached as **Exhibit 4**.

6. Mega United requests that the Office of Public Accountability approve Mega United's Request for Adjustment of Contract Price due to Prolonged Delay in the amount of \$460,081, in addition to attorney's fees and interest.

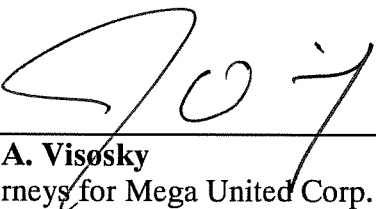
7. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for the appeal, are attached and referenced above.

Declaration regarding court action:

Pursuant to 5 GCA Chapter 5, Mega United confirms that no case or action concerning the subject of this Appeal has been commenced in court.

Roberts Fowler & Visosky LLP

Date: June 15, 2017

By: 

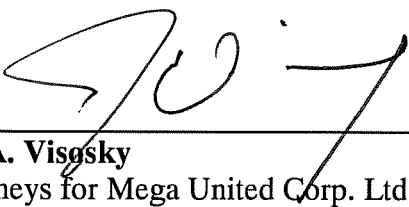
Jon A. Visosky
Attorneys for Mega United Corp. Ltd.

Verification

I, declare under penalty of perjury under the laws of Guam that I have read the foregoing Notice of Appeal and that it is true and correct of my own knowledge, except as to those matters alleged upon information and belief and as to those matters, I believe them to be true.

Roberts Fowler & Visosky LLP

Date: June 15, 2017

By: 

Jon A. Visosky
Attorneys for Mega United Corp. Ltd.