

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



FAX

To:	Mr. Glenn Leon Guerrero Director Department of Public Works 542 North Marine Corps Drive Tamuning, Guam 96913 Fax: (671) 649-6178	From:	Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
		Pages:	9 (including cover page)
CC:	Mr. Jeffrey Voacolo Chief Operations Officer Micronesia Renewable Energy, Inc. Mailing address: P.O. Box 7810 Tamuning, Guam 96913 Physical address: 167B E.T. Calvo Memorial Parkway Tamuning, Guam 96913 Phone: (671) 632-2613 Fax: (671) 647-8035	Date:	November 27, 2018
		Phone: Fax:	(671) 475-0390 x. 209 (671) 472-7951

Re: OPA-PA-18-007 Notice of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

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Thank you,
Frederick Jones
Accountability Auditor I
fjones@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

November 27, 2018

Mr. Glenn Leon Guerrero
Director
Department of Public Works
542 North Marine Corps Drive
Tamuning, Guam 96913

VIA FACSIMILE: 649-6178

Re: Notice of Receipt of Appeal – OPA-PA-18-007

Dear Mr. Leon Guerrero,

Please be advised that Micronesia Renewable Energy (hereinafter referred to as “MRE”) filed an appeal with the Office of Public Accountability (OPA) on November 26, 2018, regarding the Department of Public Work (DPW)’s response to MRE’s protest relative to the procurement award Project No. 200-5-1041-F-TAM: DPW Capital Improvement Project. OPA has assigned this appeal case number OPA-PA-18-007.

Immediate action is required of DPW 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. The first two 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 **Tuesday, December 4, 2018**, 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 **Wednesday, December 12, 2018**, 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 MRE. Although the Guam Procurement Law and Regulations

require only one copy of the procurement record, OPA respectfully asks that DPW 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 Frederick Jones at 475-0390 ext. 207 or fjones@guamopa.com should you have any questions regarding this notice.

Sincerely,

A handwritten signature in black ink, appearing to read "BJF Cruz", with a long, sweeping horizontal line extending to the right.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First 6 Pages of the Notice of Appeal – OPA-PA-18-007

Cc: Jeffrey Voacolo, Chief Operations Officer for Appellant MRE



RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

DATE: Nov 26, 2018

TIME: 11:25 AM PM BY: FDJ

FILE NO OPA-PA: ~~18-004~~^{FDJ} 18-007

PART I- To be completed by OPA

In the Appeal of)
)

NOTICE OF APPEAL

Micronesia Renewable Energy, Inc)
(Name of Company), APPELLANT)

Docket No. OPA-PA ~~18-004~~^{FDJ} 18-007

PART II- Appellant Information

Name: Micronesia Renewable Energy, Inc.
Mailing Address: P.O. Box 7810
Tamuning, GU 96931
Business Address: 167B E.Y. Calvo Memorial Parkway
Tamuning, GU 96913
Email Address: jyoacolo@micronesiarenewableenergy.com
Daytime Contact No: o: 632-2613 c: 487-3763
Fax No.: 647-8035

PART III- Appeal Information

- A) Purchasing Agency: Department of Public Works
B) Identification/Number of Procurement, Solicitation, or Contract: Project No. 200-5-1041-F
Tam
C) Decision being appealed was made on 11/14/18 (date) by:
 Chief Procurement Officer Director of Public Works Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

D) Appeal is made from:
(Please select one and attach a copy of the Decision to this form)

- Decision on Protest of Method, Solicitation or Award
 Decision on Debarment or Suspension
 Decision on Contract or Breach of Contract Controversy
(Excluding claims of money owed to or by the government)
 Determination on Award not Stayed Pending Protest or Appeal
(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

PACIFIC SOLAR & PHOTOVOLTAIC

PART IV- Form and Filing

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.

PART 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 his or 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.

Submitted this 26 day of Nov 2018.

By: [Signature]
APPELLANT
Jarrey Vatedo COO MPE

By: _____
Appellant's Duly Authorized Representative
(Address)
(Phone No.)



**Appendix B: Declaration Form
PROCUREMENT APPEAL**

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: Nov 26, 2018

TIME: 11:25 AM PM BY: FDJ

FILE NO OPA-PA: ~~18-007~~ ^{FDJ} 18-007

In the Appeal of)
)
)
(Name of Company), APPELLANT)
)
MICRONESIA RENEWABLE
ENERGY, INC.

Docket No. OPA-PA ~~18-007~~ ^{FDJ} 18-007

DECLARATION RE COURT ACTION
(To be signed by the Government Purchasing Agency.)

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 his or 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.

Submitted this ___ day of ____, 20__.

By: _____
DECLARANT

Print Declarant's Name



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PROCUREMENT APPEALS

Appendix C: Notice of Hearing Form DATE: Nov 26, 2018
PROCUREMENT APPEAL TIME: 11:25 AM PM BY: FQJ

FILE NO OPA-PA: ~~18-004~~ ^{FQJ} 18-007

In the Appeal of _____)
_____))
_____))
(Name of Company), APPELLANT _____))
_____))
MICRONESIA RENEWABLE)
ENERGY, INC.)

NOTICE OF HEARING
Docket No.: OPA-PA 18-007

You are hereby notified that a hearing will be held before the Public Auditor or the Hearings Officer for Procurement Appeals at the Office of Public Accountability on _____, day of _____, 20__, at the hour of _____, relative to the above-referenced Procurement Appeal. You may be present at the hearing; may be, but need not be, represented by counsel; may present any relevant evidence; and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Hearings Officer for Procurement Appeals, Office of Public Accountability.

Please acknowledge receipt of this Notice and return to the Office of Public Accountability immediately.

Acknowledged receipt:

Receiver's Signature

Print Name

Date



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PROCUREMENT APPEALS

Appendix D: Hearing Request/Waiver Form
PROCUREMENT APPEAL

DATE: Nov 26, 2018

TIME: 11:25 AM PM BY: FDJ

FILE NO OPA-PA: ~~18-007~~ ^{FDJ} 18-007

In the Appeal of)
)
)
)
)
)
(Name of Company), APPELLANT)
)
MICRONESIA RENEWABLE)
ENERGY, INC.)

HEARING
REQUEST/WAIVER

Docket No. OPA-PA ~~18-007~~ ^{FDJ} 18-007

Please select one:

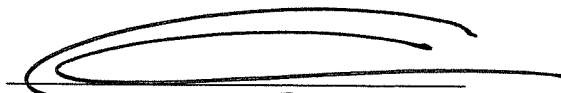
Pursuant to 2 GAR § 12108(a), the undersigned party does hereby request a hearing on the appeal stated above.

Pursuant to 2 GAR § 12108(a), the undersigned party does hereby waive his/her right to a hearing and is submitting the appeal stated above on record without a hearing.

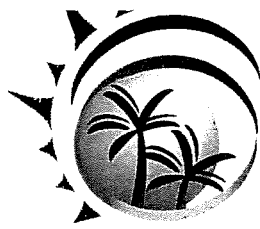
Submitted this 26 day of Nov, 2018.

By: (Please select one)

- APPELLANT
- Chief Procurement Officer
- Director of Public Works
- Head of Purchasing Agency


Signature

DAVID VOCCOLO COO
Print Name WRE



MICRONESIA
RENEWABLE ENERGY INC.

Public Works Department
542 North Marine Corps Drive
Tamuning, Guam 96913
Attn: Mr. Glenn Leon Guerrero

Dear Mr. Guerrero,

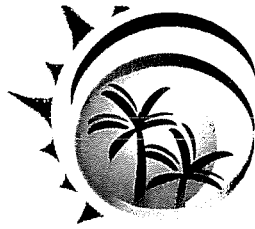
Please accept this letter as an official notice to protest the award of Project No: 200-5-1041-F-TAM. Our firm is protesting this award under the following conditions.

- 1.) Award to an unqualified, non-responsive bidder under the following conditions:
 - a.) On the morning of the bid opening, our business development assistant Ms. Dorothy Shultice was there for the bid opening, she observed the following and this is her statement: "When I walked into the room, I saw John Calanayan and a tall guy with dark hair from Pacific Solar shuffling through papers. When John saw me, he turned around and came back with a sign in sheet for us to fill in. He then had us place our bids into a wooden box with a slot. Pacific Solar's was clipped together, whereas MRE's was in a vanilla sealed envelope, as I thought was required. When John opened the box, he commented that he would open mine first. He stepped back several feet to a desk where another gentleman was writing the amounts he was reading to him. Then he did the same for Pacific Solar's unsealed bid.". This is clearly not allowable under the Guam Procurement regulations. As stated in the Invitation for Bid and the Instructions to Bidders, receipt and Opening of Bids, Sealed bids in duplicate enclosed in a sealed envelope were to be submitted, this was clearly a violation of Guam Procurement Law.
 - b.) Pacific Solar and Photovoltaic was clearly lower in price than Micronesia Renewable Energy, Inc. but what is the Government of Guam getting for this capital outlay. MRE clearly stated the sizing of the system that we would provide for the price submitted, after numerous attempts to get this question answered we have not been able to. I believe this is a major disservice to the community of

Mailing Address: PO Box 7810, Tamuning Guam 96931

Physical Address: 167B E.T. Calvo Memorial Pkwy Tamuning, Guam 96913

Ph (671) 632-2613 Fax (671)647-8035
www.micronesiarenewableenergy.com



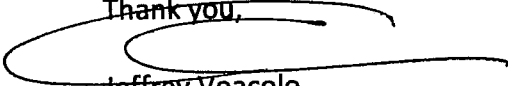
MICRONESIA

RENEWABLE ENERGY INC.

Guam, it would be like placing a bid out for an automobile and taking the lowest bid without knowing what kind of car you are getting.

I am available to discuss this at your convenience, but I believe this project was awarded to a bidder that was non-responsive and this needs to be investigated.

Thank you,


Jeffrey Voacolo
Chief Operations Officer
Micronesia Renewable Energy, Inc.

Mailing Address: PO Box 7810, Tamuning Guam 96931

Physical Address: 167B E.T. Calvo Memorial Pkwy Tamuning, Guam 96913

Ph (671) 632-2613 Fax (671)647-8035
www.micronesiarenewableenergy.com



The Honorable
EDDIE BAZA CALVO
Governor

The Honorable
RAY S. TENORIO
Lieutenant Governor



public works
 DIPATAMENTON CHECHO PUPLEKO
GLENN LEON GUERRERO

Director

ANDREW LEON GUERRERO

Deputy Director

Draft – 10-01-2018

Jeffrey Voacolo
 Chief Operations Officer
 Micronesia Renewable Energy, Inc.
 167B E.T. Calvo Memorial Tkwy
 Tamuning, Guam 96913

Re: Notice of Protest – Project No. 200-5-1041-F-Tam

Mr. Voacolo:

This serves to respond to Micronesia Renewable Energy, Inc.’s (“MRE”) protest in the above matter as set forth in your letter of September 19, 2018. MRE’s protest does not specifically state how the alleged violations are to be rectified but instead states that it is available to discuss the procurement. For the reasons stated herein the Department of Public Works (“DPW”) Contracting Officer has determined that Protestor’s written protest is without merit and is therefore denied.

MRE’s first claim is that Pacific Solar & Photovoltaics, Inc. (“PSP”) bid was “clipped together” in violation of the Guam Procurement regulations and the IFB’s Instructions to Bidders. This claim is not factually correct. Similar to MRE, PSP’s bid was submitted, in duplicate, in a vanilla sealed envelope. Enclosed is a copy of DPW’s receipted copy of PSP’s sealed bid. It appears your staff members reference to the “shuffling of papers” related to DPW’s tabulation and sign in sheet.

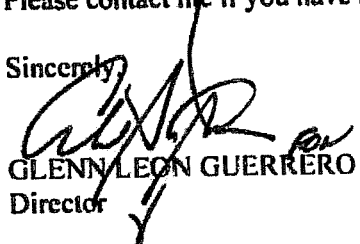
MRE also claims that PSP’s bid was “clearly lower in price than Micronesia Renewable Energy, Inc. but what is the Government of Guam getting for this capital outlay.” It isn’t clear, based on this and other related comments in MRE’s protest, what the grounds are for MRE’s second protest. While DPW appreciates that MRE believes its product to be superior to PSP, the department is obligated by law to award the contract to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the IFB. *See*, 5 GCA § 5211(g). DPW Capital Improvement Project’s Bid Evaluation and Tabulation sheets, copies of which are enclosed herewith, both document that PSP met the IFB’s terms and conditions. As such, DPW correctly awarded the contract to PSP being the lowest responsible bidder who met the requirements and criteria of the IFB.

///
 ///
 ///

This is a final decision of the Contracting Office concerning MRE's September 19, 2018 protest of the above referenced IFB. You are hereby advised that MRE has the right to seek any administrative or judicial review authorized by law. If MRE appeals to the Office of Public Accountability ("OPA") such must be filed within fifteen (15) days of this notice of final decision. See, 5 GCA M 5425(e).

Please contact me if you have any questions.

Sincerely,


GLENN LEON GUERRERO *for* 11/14/18
Director
HC

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To:	Mr. Glenn Leon Guerrero Director Department of Public Works 542 North Marine Corps Drive Tamuning, Guam 96913 Fax: (671) 649-6178	From:	Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
		Pages:	9 (including cover page)
CC:	Mr. Jeffrey Voacolo Chief Operations Officer Micronesia Renewable Energy, Inc. Mailing address: P.O. Box 7810 Tamuning, Guam 96913 Physical address: 167B E.T. Calvin Memorial Parkway Tamuning, Guam 96913 Phone: (671) 632-2613 Fax: (671) 647-8035	Date:	November 27, 2018
		Phone:	(671) 475-0390 x. 209
		Fax:	(671) 472-7951

Re: OPA-PA-18-007 Notice of Appeal

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Abbreviations:

HS: Host send
HR: Host receive
WS: Waiting send

PL: Polled local
PR: Polled remote
MS: Mailbox save

MP: Mailbox print
RP: Report
FF: Fax Forward

CP: Completed
FA: Fail
TU: Terminated by user

TS: Terminated by system
G3: Group 3
EC: Error Correct

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fjones@guamopa.com

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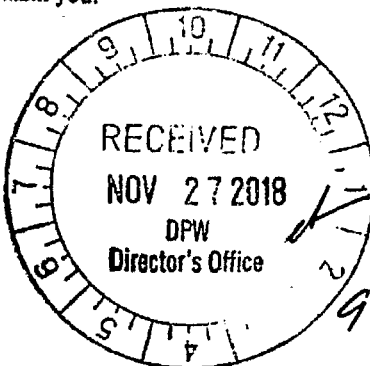
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fiones@guamopa.com

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ELEANOR F. BORJ.
9:15 AM