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		<b>Pages:</b>	6 (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>Vanessa L. Williams, Esq.</b> <b>(Attorney for Appellant JJ Global)</b> Law Office of Vanessa L. Williams, P.C. 414 West Soledad Avenue GCIC Bldg., Suite 500 Hagåtña, Guam 96910 Tel: (671) 477-1389 Email: VLW@vlwilliamslaw.com  <b>Mitchell F. Thompson, Esq.</b> <b>(Attorney for Interested Party Landscape Management Systems, Inc.)</b> Thompson Thompson & Alcantara 238 Archbishop Flores Street, Suite 801 Hagåtña, Guam 96910 Tel: (671) 472-2089 Fax: (671) 477-5206	<b>Date:</b>	March 25, 2019
		<b>Phone:</b>	(671) 475-0390 x. 208
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**Re:** OPA-PA-19-001 Decision and Order RE Appellant's Motion for Injunctive Relief and Stay of Procurement and For Final Decision on Second Protest

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**OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS**

IN THE APPEAL OF,

JJ GLOBAL SERVICES,

Appellant

**APPEAL NO: OPA-PA-19-001**

**DECISION AND ORDER RE  
APPELLANT'S MOTION FOR  
INJUNCTIVE RELIEF AND STAY OF  
PROCUREMENT AND FOR FINAL  
DECISION ON SECOND PROTEST**

**To: Purchasing Agency:**  
Guam Visitor's Bureau  
C/O Thomas J. Fisher, Esq.  
Fisher & Associates  
167 East Marine Corps Drive  
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**Appellant:**  
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**Interested Party:**  
Landscape Management Systems, Inc.  
C/O Mitchell F. Thompson, Esq.  
Thompson Thompson & Alcantara  
238 Archbishop Flores Street, Suite 801  
Hagåtña, Guam, 96910  
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**THIS MATTER**, came before the Hearing Officer for Procurement Appeals on March 5, 2019 for a hearing on the Appellant's Motion for Injunctive Relief and Stay of Procurement Pending Final Resolution of Appeal and for Order Requiring the Guam Visitor's Bureau to issue a Final Decision on Protest 2 that was filed in this matter on February 6, 2019. Keiko

1 Bustamante was present on behalf of the Appellant and he was represented by the Appellant's  
2 Counsel of Record, Vanessa L. Williams, Esq. Pilar Laguana appeared on behalf of the  
3 Purchasing Agency and she was represented by the Purchasing Agency's Counsel of Record,  
4 Thomas J. Fisher, Esq. Robert Salas appeared on behalf of the Interested Party and he was  
5 represented by the Interested Party's Counsel of Record, Mitchell F. Thompson, Esq.  
6

## 7 **BACKGROUND**

8 The Appellant makes two motion. First, the Appellant moves the Office of Public  
9 Accountability (OPA) for a temporary restraining order restraining and enjoining the Purchasing  
10 Agency from continuing contract performance for GVB-IFB-2018-001 (Tumon Landscape  
11 Maintenance) (Hereafter Referred to as "IFB"). Second, the Appellant moves the OPA to order  
12 the Purchasing Agency to issue a final decision on a second protest it filed concerning the IFB on  
13 December 27, 2018. Appellant's Motion at 1-2.  
14

## 15 **DISCUSSION**

### 16 **The OPA does not have the Jurisdiction to Enjoin and Restrain the Purchasing Agency**

17 The OPA does not have the jurisdiction to impose injunctive relief on the Purchasing  
18 Agency. The Public Auditor shall have the power to review and determine *de novo* any matter  
19 properly submitted to him. 5 G.C.A. §5703 and 2 G.A.R., Div. 4, Chap. 12, §12103(a). For  
20 procurement protests, any actual or prospective bidder, offeror, or contractor who may be  
21 aggrieved in connection source selection, solicitation or award of a contract, may protest to the  
22 Chief Procurement Officer, the Director of Public Works, or the head of a purchasing agency. 5  
23 G.C.A. §5425(a). If the protest is not resolved by mutual agreement, the Chief Procurement  
24 Officer, the Director of Public Works, the head of a purchasing agency, or the designee of one of  
25 these officers shall promptly issue a decision in writing and such decision may be appealed by  
26 the protestant to the Public Auditor within fifteen days after receipt by the protestant of the  
27 notice of decision. 5 G.C.A. §5425(c) and (e) and 2 G.A.R., Div. 4, Chap. 9, §9101(g). The  
28 Public Auditor shall determine whether a decision on the protest of method of selection,

1 solicitation, or award of the contract, or entitlement of costs is in accordance with the statutes,  
2 regulations, and the terms and conditions of the solicitation. 2 G.A.R., Div. 4, Chap. 12, §12112.  
3 The Public Auditor shall issue a decision in writing or take other appropriate action on each  
4 appeal submitted. 5 G.C.A. §5702. Hence, for an appeal of a procurement protest, the Public  
5 Auditor's jurisdiction is limited to reviewing the Purchasing Agency's protest decision *de novo*  
6 to determine whether the decision on the protest of method of selection, solicitation, or award of  
7 the contract, or entitlement of costs is in accordance with the statutes, regulations, and the terms  
8 and conditions of the solicitation and issue a decision in writing or take other appropriate action.  
9 Further, the aforementioned statutes governing the Public Auditor's jurisdiction concerning  
10 reviews of procurement protest decisions do not include granting requests for injunction relief.

11 The Superior Court of Guam has the authority to grant injunctive relief. The Superior  
12 Court of Guam's power to issue injunctive relief in a procurement dispute is granted by 5 G.C.A.  
13 §5480(c). *Teleguam Holdings LLC, v. Territory of Guam*, 2015 Guam 13, ¶33. That part of  
14 Guam's Procurement Law states that the Superior Court of Guam has the jurisdiction to grant  
15 injunctive relief in an action between the Government of Guam and a bidder, offeror, or  
16 contractor, either actual or prospective, to determine whether the solicitation or award of a  
17 contract is in accordance with the statutes, regulations, and the terms and conditions of the  
18 solicitation. 5 G.C.A. §5480(a) and (c). The procedures for obtaining injunctive relief from the  
19 Superior Court of Guam are set forth in Rule 16, Guam Rules of Civil Procedure (GRCP) and  
20 Rule 65(d), GRCP governs the issuance of a temporary restraining order. *Teleguam Holdings*  
21 *LLC* at ¶33. This rule of civil procedure is not applicable OPA. Therefore, the authority to issue  
22 a temporary injunction pursuant to Rule 65(d), GRCP is vested in the Superior Court of Guam  
23 pursuant to 5 G.C.A. §5480(c) and not the OPA.

24 The OPA is not persuaded by the Appellant's argument that 2 G.A.R., Div. 4, Chap. 12,  
25 §12115 confers upon the OPA the jurisdiction to render injunctive relief. Appellant's Reply at  
26  
27  
28

1 2.<sup>1</sup> That regulation is inapplicable to this matter because it concerns the procedure for the OPA  
2 to determine an appeal of a Purchasing Agency's written determination to avoid the automatic  
3 stay of procurement because awarding a contract without delay is necessary to protect substantial  
4 interests of the territory in accordance with 5 G.C.A. §5425(g). Here, the Purchasing Agency  
5 has not made any such determination and this matter is not the appeal of such determination  
6 made in accordance with 5 G.C.A. §5425(g). Therefore, 2 G.A.R., Div. 4, Chap. 12, §12115 is  
7 inapplicable to this matter.

### 8 9 **The Appellant's Second Protest is not Properly before the OPA**

10 The Appellant's second protest concerning the IFB and filed on December 27, 2018 is  
11 not properly before the OPA. The Public Auditor shall have the power to review and determine  
12 *de novo* any matter properly submitted to him. 5 G.C.A. §5703 and 2 G.A.R., Div. 4, Chap. 12,  
13 §12103(a). The Public Auditor shall determine whether a decision on the protest of method of  
14 selection, solicitation, or award of the contract, or entitlement of costs is in accordance with the  
15 statutes, regulations, and the terms and conditions of the solicitation. 2 G.A.R., Div. 4, Chap. 12,  
16 §12112. Here, the Appellant admits that the Purchasing Agency has not rendered a decision on  
17 its December 27, 2018 protest. Appellant's Motion at 4. Hence, the Appellant's December 27,  
18 2018 decision is not properly before the OPA because there is no decision by the Purchasing  
19 Agency concerning this protest for the OPA to review.

20 Despite the foregoing, the OPA does note that, as of the date of this decision, it has been  
21 nearly three months since the Appellant filed its December 27, 2018 protest with the Purchasing  
22 Agency. The Purchasing Agency is reminded that Guam Procurement Laws and Regulations  
23 require that if the protest is not resolved by mutual agreement, the Purchasing Agency is required  
24 to **promptly**, and as **expeditiously as possible**, issue a decision in writing (Bold Emphasis  
25 Added). 5 G.C.A. §5425(c) and 2 G.A.R., Div. 4, Chap. 9, §9101(g)(1).

26  
27  
28 <sup>1</sup> The Appellant cites: "2 G.A.R. §12215." However, this regulation does not exist and the OPA believes that this was an erroneous reference to 2 G.A.R., Div. 4, Chap. 12, §12115.

1  
2 **CONCLUSION**

3 Based on the foregoing, the Hearing Officer hereby DENIES the Appellant's Motion for  
4 Injunctive Relief and Stay of Procurement Pending Final Resolution of Appeal and for Order  
5 Requiring the Purchasing Agency to issue a Final Decision on the Appellant's second protest.  
6

7 **SO ORDERED** this 25<sup>th</sup> day of March, 2019 by:  
8

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10 \_\_\_\_\_  
11 ANTHONY R. CAMACHO, ESQ.  
12 Hearing Officer  
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<b>CC:</b>	Vanessa L. Williams, Esq. <b>(Attorney for Appellant JJ Global)</b> Law Office of Vanessa L. Williams, P.C. 414 West Soledad Avenue GCJC Bldg., Suite 500 Hagåtña, Guam 96910 Tel: (671) 477-1389 Email: VLW@vlwilliamsllaw.com	<b>Phone:</b>	(671) 475-0390 x. 208
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Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

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**OPA-PA-19-001 Decision and Order RE Appellant's Motion for Injunctive Relief and Stay of Procurement and For Final Decision on Second Protest**

1 message

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To: Vanessa Williams <vlw@vlwilliamsllaw.com>

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Regards,

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