



Jerrick Hernandez <jhernandez@guamopa.com>

In the Appeal of Guahan Ventures Inc. dba Turfco; OPA-PA-21-003

Claire Pollard <cpollard@rwtguam.com>

Tue, Sep 14, 2021 at 3:38 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "Edwin J. Torres" <etorres@rwtguam.com>, "Joshua D. Walsh" <jdwalsh@rwtguam.com>

Dear Mr. Hernandez:

Please see the attached *Motion to Continue Hearing Date* and *Declaration of Joshua D. Walsh in Support of Motion to Continue Hearing Date*. Please feel free to contact our office if you have any questions. Thank you.

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Regards,
Claire Pollard

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2 attachments**9.14.21 Motion to Continue Hearing Date.pdf**
136K**9.14.21 Declaration of JDW.pdf**
71K

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IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

Guahan Ventures Inc. dba Turfco,

Appellant.

DOCKET NO. OPA-PA-21-003

**MOTION TO CONTINUE HEARING
DATE**

Appellant Guahan Ventures Inc. dba Turfco (“Turfco” or “Appellant”) moves the Office of Public Accountability (“OPA”) for an order vacating the hearing in this matter set for September 16, 2021, all other related dates, and setting a new scheduling conference in this matter in two weeks, or at such time as is convenient for the OPA. This Motion is supported by the following memorandum, and the Declaration of Joshua D. Walsh (“Walsh Decl.”) submitted contemporaneously with this Motion. Neither the General Services Agency (“GSA”) nor its counsel objects to the continuance requested. Walsh Decl., ¶ 9.

MEMORANDUM IN SUPPORT OF MOTION

Turfco has protested the award by the General Services Agency (“GSA”) of certain golf carts. The hearing in this procurement appeal was set to commence on September 16, 2021. *See*, Scheduling Order, August 18, 2021. On September 13, 2021,

it was disclosed to the Appellant that the Chief Procurement Officer in this matter, Claudia Acfalle, is on leave, left the island, and would be unavailable for at least two months. Walsh Decl., ¶ 5. This departure of the Chief Procurement Officer in this matter during the week of the trial set in this matter has occurred despite the GSA confirming a month ago during the scheduling conference held in this matter the appropriateness of the September 16, 2021, hearing date. Walsh Decl., ¶ 6.

Ms. Acfalle's absence from these proceedings materially prejudices Turfco and its appeal. Ms. Acfalle's testimony is likely essential to develop and defend the late changes to the golf cart procurement that Turfco has protested. More, as the signatory of the protest denial letter that triggered Turfco's appellate rights to the OPA, Ms. Acfalle is best positioned to explain the purported "Emergency" nature of this procurement, the late change to conform with criteria that only Autospot could comply with, and why regular planned procurement was not possible. *See*, Procurement Record ("PR"), Tab 3. Ms. Acfalle was also the sole recipient of a June 12 Memo from Guam Homeland Security describing the need for golf carts in the first instance. Procurement Record, Tab 7. Furthermore, Ms. Acfalle was the signatory that executed purchase orders for Guam Auto Spot and directed delivery of the golf carts in the time period between choosing to contract with awardee Autospot and informing TurfCo that it had not been selected for award — a delay that allowed GSA to avoid the automatic stay required by 5 GCA § 5425(g). *See*, PR, Tab 8.


Ms. Acfalle is the Chief Procurement Officer in this appeal that implicates significant issues related to notice to offerors, the established practices of the GSA in

procuring items, and the expansive use of emergency procurement powers. The Appellant recognizes the waste of administrative judicial resources that exists when a trial is vacated so late in the process, but proceeding forward with a hearing in this matter is not a viable solution. Ms. Acfalle's absence from these proceedings will leave a materially deficient record, and these proceedings should be delayed until she is available to testify before the OPA.¹ Given the recently noticed absence, Turfco requests that the OPA issue an order vacating the hearing in this matter set for September 16, 2021, all other related dates, and setting a new scheduling conference in this matter in two weeks, or at such time as is convenient for the OPA.

Submitted this 14th day of September, 2021.

RAZZANO WALSH & TORRES, P.C.

By: _____


JOSHUA D. WALSH
Attorneys for Appellant
Turfco

¹ Turfco and its counsel have been preparing for an in-person examination of Ms. Acfalle. While the Public Auditor is imbued with the authority to conduct his hearings as he chooses, Turfco believes that the live, in person testimony of Ms. Acfalle would be most appropriate in this case unless Government public health orders prevent such in-person proceedings altogether. In the event that Ms. Acfalle seeks to participate remotely in these proceedings, Turfco requests that the continuance be granted nonetheless so as to allow for Turfco's counsels to prepare for such a remote hearing, and to schedule witnesses for its case in chief appropriately.