



Jerrick Hernandez <jhernandez@guamopa.com>

Electronic Filing of UOG' s Motion to Dismiss Issues and Strike Extraneous Pleadings in OPA-PA-21-011

Camacho, Anthony <arcamacho@triton.uog.edu>

Fri, Dec 10, 2021 at 4:45 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>, GPE INC <guampacific@gmail.com>

Cc: Cynthia Guerrero <cguerrero@triton.uog.edu>

Greetings,

Please accept for filing, UOG's Motion to Dismiss Issues and Strike Extraneous Pleadings in OPA-PA-21-011. Please confirm receipt of this motion.

Sincerely,

Anthony R. Camacho, Esq.
UOG General Counsel



UOG's Motion to Dismiss Issues and to Strike Extraneous Pleadings.pdf

804K

ANTHONY R. CAMACHO, ESQ.
UNIVERSITY OF GUAM
UOG Station
Mangilao, Guam 96923

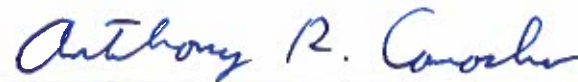
Appearing as Counsel for University of Guam

PROCUREMENT APPEAL

IN THE MATTER OF)	DOCKET NO. OPA-PA-21-011
)	
GUAM PACIFIC ENTERPRISES, INC.,)	UNIVERSITY OF GUAM'S
)	MOTION TO DISMISS ISSUES
Appellant.)	AND TO STRIKE EXTRANEOUS
_____)	PLEADINGS

COMES NOW, Purchasing Agency UNIVERSITY OF GUAM (the “University”), through its General Counsel, ANTHONY R. CAMACHO, ESQ., who hereby MOVES the OPA to DISMISS some of the issues in this appeal and to strike the GPE’s Extraneous Pleadings and this motion is based on the following Memorandum of Points and Authorities and any arguments, testimony, and evidence presented at a hearing on this motion.

SUBMITTED THIS 10th day of December, 2021 by:



ANTHONY R. CAMACHO, ESQ.
Attorney for the University of Guam

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE
UNIVERSITY OF GUAM'S MOTION TO DISMISS APPEAL**

BACKGROUND

On or about April 26, 2021, the University issued UOG-IFB-21-10 (Air Purifier System and Replacement Filters) (“IFB”), four bidders submitted bids in response to the IFB, GPE, J&B MODERN TECH, WANG BROS. HOLDING LLC., and DOCOMO, and the University conducted a bid opening on or about May 20, 2021. On or about June 7, 2021, the University determined that DOCOMO submitted the lowest responsive bid and was awarded the contract for this IFB. On or about July 1, 2021, the University prepared a Bid Status that informed GPE that its bid was rejected due to high price. Despite the preparation of these documents, they were not sent to GPE until September 2, 2021, due an oversight on the part of the University officials conducting the procurement for the IFB. On or about September 7, 2021, GPE sent, via email, its “notice of protest” to the procurement official handling the procurement of the IFB. GPE filed its appeal, In the Matter of Guam Pacific Enterprises, Inc., OPA-PA-21-006 (Office of Public Accountability), on or about September 15, 2021. See Notice of Appeal for OPA-PA-21-006 attached herein as Exhibit 1.

On or about September 23, 2021, UOG filed a Motion to Dismiss GPE’s appeal in OPA-PA-21-006, alleging, in relevant part, that the OPA had no jurisdiction over the appeal due to GPE having filed it prior to UOG issuing a decision on GPE’s protest. On October 4, 2021, the OPA dismissed OPA-PA-21-006 without prejudice and ordered UOG to respond to GPE’s protest within fourteen (14) days of the OPA’s order. At the October 4, 2021 Status Hearing in OPA-PA-21-006, it had been agreed that UOG would be using the

allegations contained in GPE's appeal in OPA-PA-21-006 as the basis of GPE's protest due to said protest merely being an email which stated that GPE was protesting, and which failed to articulate any grounds for a protest that UOG could answer. On or about October 18, 2021, UOG issued its decision denying GPE's protest. This appeal followed and GPE raised the following issues in its Notice of Appeal: (1) UOG gave GPE late notice of its award to DOCOMO; (2) Docomo's Bid did not comply with the intention and background of Exhibit A on page 20 of the IFB; (3) UOG personnel were not qualified to evaluate the bids submitted in response to the IFB; (4) UOG violated the federal Buy American Act; and (5) UOG improperly charged GPE \$25 to receive the IFB Packet. See Notice of Appeal for OPA-PA-21-011 attached herein as Exhibit 2.

ARGUMENT

The Public Auditor must dismiss the issues of whether UOG personnel were qualified to evaluate the bids submitted in response to the IFB, whether UOG violated the federal Buy American Act, and whether and UOG improperly charged GPE \$25 to receive the IFB Packet because, as will be shown below, they are not properly before the Public Auditor. The Public Auditor must dismiss the issue of whether UOG gave GPE late notice of the award of the IFB contract to DOCOMO because UOG did not violate any Procurement Laws or Regulations by doing so and because there is no remedy for such act. Finally, the OPA must strike and not consider the extraneous pleadings filed by GPE in this matter.

The issue of whether UOG Personnel were qualified to evaluate the bids submitted in response to the IFB is not Properly before the OPA.

The issue of whether UOG Personnel were qualified to evaluate the bids or draft the specifications of the IFB is not properly before the OPA because it is being raised for the first time on appeal. The jurisdiction of the OPA is limited to matters properly submitted to it. 5 G.C.A. §5703(a) and *TRC Environmental Corp. v. OPA*, Superior Court of Guam Special Proceedings Case No. SP0160-07, Decision and Order, p. 5 (Nov. 24, 2008). Further, a purchasing agency's procurement protest decision relative to the protest of a method of selection, solicitation, or award of a contract, may be appealed by the protestant to the Public Auditor within fifteen (15) days after receipt of the protestant of the notice of decision. 5 G.C.A. §5425(e). Thus, a protest and a protest decision are required for this matter to be properly before the Public Auditor and for the Public Auditor to have jurisdiction. Here, GPE did not raise this claim in its September 7, 2021 protest or its appeal in OPA-PA-21-006. See Notice of Appeal in OPA-PA-21-006 attached herein as Exhibit 1. As a result, there is no decision issued by UOG concerning this claim for the OPA to review. Therefore, this issue is not properly before the Public Auditor because GPE has not filed a protest with UOG concerning it and the UOG has not issued a protest decision on this issue that GPE could appeal and the OPA must dismiss it.

The issues of whether UOG violated the federal Buy American Act and whether UOG improperly charged GPE \$25 to receive the IFB Packet are not properly before the OPA.

The issues of whether UOG improperly charged GPE \$25 to receive the IFB Packet and whether UOG violated the federal Buy American Act are not properly before the OPA because GPE failed to file a timely protest concerning these issues. Generally, a protest shall be made in writing to UOG's President and shall be filed in duplicate within fourteen (14) working days after the protestor knows or should have known of the facts giving rise thereto and a protest is considered filed when received by the UOG's President. Section 9.2.3.1, University of Guam's Procurement Regulations ("UOGPR"). Protests filed after the fourteen (14) working day period shall not be considered. *Id.* Here, GPE filed its protest concerning these issues more than fourteen (14) working days after GPE knew or should have known of the facts giving rise thereto.

GPE filed its September 7, 2021 protest concerning the issue of whether UOG improperly charged GPE \$25 to receive the IFB Packet more than fourteen (14) working days after GPE knew or should have known of the facts giving rise to this issue. On May 4, 2021, GPE requested that UOG send it a copy of the IFB. See excerpt of Procurement Record filed in this matter attached herein as Exhibit 3 at page IFB-079. UOG responded to this request on May 4, 2021 and informed GPE that it must pay the \$25 fee to receive a copy of the IFB and that GPE must provide proof that it paid this fee prior to UOG sending GPE a copy of the IFB. *Id.*, at IFB-082. On May 4, 2021, GPE sent UOG a second request for a copy of the IFB, and on May 5, 2021 UOG repeated that GPE must pay the \$25 fee for a copy of the IFB and UOG also provided GPE a copy of Section 3.9.6.1,

UOGPR, which authorizes UOG to charge the fee. Id., at IFB-088 and 092. GPE then sought to argue with UOG's Procurement Administrator concerning the \$25 fee and sent various emails concerning this issue on May 5, 2021 thru May 10, 2021 arguing that no other Government of Guam agency charges fees if an IFB is sent through the mail, and that there is a disagreement between GPE and UOG concerning the \$25 fee. Id., at IFB-093, 094, 097, 102, and 125. On May 11, 2021 GPE paid the \$25 fee and provided its receipt for the payment to UOG. Id., at IFB-139, 140, and 14. UOG provided GPE a copy of the IFB on that day. Id., at IFB-145. Based on this evidence, GPE knew or should of known of the facts giving rise to its issue of whether UOG was improperly charging the \$25 fee between May 4-11, 2021. Even using the last day of this period, May 11, 2021, which was a Tuesday, GPE had fourteen (14) working days from that date to file a protest concerning this issue and said time period expired on June 1, 2021. Here, GPE did not file its protest until September 7, 2021 which is beyond the fourteen (14) day period to file a protest set forth in Section 9.2.3.1, UOGPR. Accordingly, this issue is not properly before the OPA and must be dismissed.

GPE filed its September 7, 2021 protest concerning the issue of whether UOG violated the federal Buy American Act more than fourteen (14) working days after GPE knew or should have known of the facts giving rise to this issue. As stated above, GPE received the IFB on May 11, 2021. The IFB, which is part of the Procurement Record filed in this matter, is devoid of any requirement that the bidders comply with the federal Buy American Act. GPE in fact tells UOG that it must follow the Buy American Act on May 20, 2021. See email from GPE to UOG dated May 20, 2021 attached herein as

Exhibit 4. Hence, GPE knew or should have known of the issue of whether UOG was violating the federal Buy American Act on May 20, 2021. That day was a Thursday, and GPE had fourteen (14) working days from that date to file a protest concerning this issue and said time period expired on June 10, 2021. Here, GPE did not file its protest until September 7, 2021 which is beyond the fourteen (14) day period to file a protest set forth in Section 9.2.3.1, UOGPR. Accordingly, this issue is not properly before the OPA and must be dismissed.

The issue of whether UOG gave GPE late notice of the award of the IFB contract to DOCOMO is a claim for which the OPA can grant no relief.

The issue of whether UOG gave GPE late notice of the award of the IFB contract to DOCOMO is a claim for which the OPA can grant no relief. Generally, if after an award it is determined that a solicitation or award of a contract **is in violation of law**, and if the person awarded the contract has not acted in bad faith, then the contract award may be ratified, if doing so is in the best interests of the government, or terminated (Bold Emphasis Added). 5 G.C.A. §5452(a) and Section 9.7, UOG Procurement Regulations. The applicable law concerning notices of IFB awards states that the contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the IFB, whose bid amount is sufficient to comply with the current federal wage determination applicable to Guam. 5 G.C.A. §5211(g). UOG complied with this law by providing notice of award to DOCOMO on June 8, 2021. See Exhibit 5 attached herein. Further, this law does not

state a or require a specific time in which to inform the unsuccessful bidders of the award of a contract. Therefore, as UOG did not violate 5 G.C.A. §5211(g) by giving late notice to GPE of UOG's award of the IFB contract to DOCOMO, GPE's claim concerning its receipt of the late notice, is a claim for which the OPA is not able to grant relief.

Additionally, GPE does not show how, if at all it may have been prejudiced by the late notice of UOG's award of the IFB contract to DOCOMO. GPE merely shows that it sent emails to UOG's Procurement Administrator on August 26, 2021 and August 30, 2021 following up on the status of the award. See Exhibits 3 and 4, GPE's Appeal. As a result of these follow-ups by GPE, UOG's Procurement Administrator responded on September 2, 2021 and apologized for her oversight and provided GPE notice of UOG's award of IFB contract to GPE on that day. Hence, albeit there was a delay in giving the notice of the award to GPE, UOG in fact provided it and in fact responded within a reasonable time to GPE's email inquiries. Therefore, GPE suffered no prejudice by the late notice. Accordingly, the OPA must dismiss this issue because it does not constitute a violation of procurement law and the OPA is not able to provide relief to GPE.

**The OPA must strike and not consider the extraneous pleadings
filed by GPE in this matter.**

The OPA must strike and not consider the extraneous pleadings filed by GPE in this matter. Generally, an appellant may file a Notice of Appeal, a Comment on the Agency Report, materials required by the hearing officer for the hearings, and motions. 2 G.A.R., Division 4, Chapter 12, §12104(c)(1) and (4), and §12109(b) and (d). Here, on

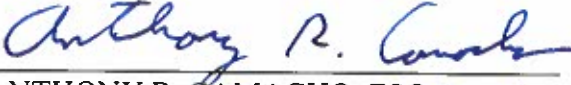
October 22, 2021, GPE filed a “Reply to Protest Decision.” On October 29, 2021, GPE filed a “Reply to Procurement Records Supplemental Evidence on Made in America.” Neither of these filings constitute filings permitted for an appellant under the OPA’s Rules of Procedure for Procurement Appeals and are extraneous pleadings in this matter. The Hearing Officer has the authority to regulate the course of the hearing and conduct of participants therein. 2 G.A.R., Division 4, Chapter 12, §12109(e). The Hearing Officer also has the authority to Receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious. 2 G.A.R., Division 4, Chapter 12, §12109(f). Here, the Hearing Officer must exercise this authority by striking GPE’s extraneous pleadings and not consider them because they are not authorized by the OPA’s Rules of Procedure and unduly prejudice UOG because the Appellant is seeking to expand the arguments and issues that he made in his Protest and his original appeal in this matter.

CONCLUSION

Based on the foregoing, the Public Auditor must dismiss the issues of whether UOG personnel were qualified to evaluate the bids submitted in response to the IFB, whether UOG violated the federal Buy American Act, whether UOG improperly charged GPE \$25 to receive the IFB Packet and the issue of whether UOG gave GPE late notice of the award of the IFB contract to DOCOMO, and strike and not consider GPE’s October 22, 2021 “Reply to Protest Decision” and its October 29, 2021 “Reply to Procurement Records Supplemental

Evidence on Made in America.” The OPA may then proceed with a hearing on the remaining issue of whether DOCOMO’s Bid complied with the intention and background of Exhibit A on page 20 of the IFB, which GPE has stated is its main issue.

SUBMITTED this 10th day of December, 2021 by:



ANTHONY R. CAMACHO, ESQ.
Attorney for the University of Guam

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



FAX

To:	Ms. Emily G. Gumataotao Supply Management Administrator University of Guam UOG Station Mangilao, Guam 96923 Phone: (671) 735-2925 Fax: (671) 735-3010 Email: eggumataotao@triton.uog.edu ; uog.bids@triton.uog.edu	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	9 (including cover page)
CC:	Mr. Sedfrey Linsangan President Guam Pacific Enterprise, Inc. Phone: (671) 649-6994/7/8 Email: guampacific@gmail.com	Date:	September 16, 2021
		Phone:	(671) 475-0390 x. 204
		Fax:	(671) 472-7951

Re: OPA-PA-21-006 Notice of Receipt of Appeal

For Review

Please
 Comment

Please Reply

Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,

Jerrick Hernandez, Auditor

jhernandez@guamopa.com

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

Exhibit 2



OFFICE OF PUBLIC ACCOUNTABILITY

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

Phone: (671) 475-0390 / FAX: (671) 472-7951

September 16, 2021

Ms. Emily G. Gumataotao
Supply Management Administrator
University of Guam
UOG Station
Mangilao, Guam 96923

VIA FACSIMILE: (671) 735-3010

Re: Notice of Receipt of Appeal – OPA-PA-21-006

Dear Ms. Gumataotao,

Please be advised that Guam Pacific Enterprises Inc. (hereinafter referred to as "GBE INC" filed an appeal with the Office of Public Accountability (OPA) on September 15, 2021, regarding the University of Guam's (UOG) procurement award for UOG Bid B21-10 for Air Purifier system and Replacement Filter. OPA has assigned this appeal case number OPA-PA-21-006.

Immediate action is required of UOG 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 eight 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 **Thursday, September 23, 2021**, 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 **Thursday, September 30, 2021**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and one copy to OPA (electronic filings will be acceptable), and serve a copy to GBE INC. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that UOG provide one original and one electronic file of the said record, which

will be distributed as follows: Copy-1: Master File; and Copy-2: Public Auditor and/or Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 204 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', written in a cursive style.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Six Pages of the Notice of Appeal – OPA-PA-21-006

Cc: Sedfrey M. Linsangan, GPE Inc. President

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

J & B Modern Tech _____
Wang Bros. LLC _____
Docomo Pacific _____

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 15 day of Sept 20 21

By: [Signature]
APPELLANT

or

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

APPENDIX A

Concise Statement

Notice of Award and Bid Status was only provided to me on Sept. 2, 2021. I had been following up since June, July and August many times but the answer was that they are still evaluating the bid.

The Administrator reasoned out that it was an oversight on her part. (Please see her letter dated Sept. 2 (Exhibit A) My concern or the violation is the Notice of Award was provided first on June 7, 2021 but the Bid Status which was not sent to me was dated July 1. (Please see Exhibit B and C)

The specs of Docomos offer does not comply with the intention and Background as provided in Exhibit A of the Bid (pages 20). The offer was specifically for homes not classrooms.

The offer that was favored was made in Israel not USA. VOG should be buying American made for Federal funding projects to comply with Buy American Act.

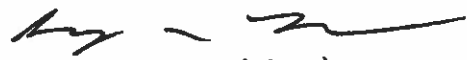
VOG violates the provisions in Instruction 12, Method of Award because the product they approved does not conform for class rooms use but only for homes. It is not in the public interest that VOG will buy or award the bid that does not served its purpose. Yes the product is cheap and the lowest bid but just a waste of money since it is not designed for schools. Please see page 5 of Bid Document (Method of Award).

Ruling Requested

It is up to OPA to determine the appropriate ruling or sanction to correct this wrong disposition on Method of Award and not following the basic Guam Procurement Law on Bid Status and Notice of Award. I also have to add that they (LOG) are the only one charging \$25.00 for Bid Documents in PDF file. All agencies does not charge \$25.00 if Bidders download the file.

Very Respectfully,

9/15/21


Sedfrey M. Linsaugal

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



FAX

To:	Ms. Emily G. Gumataotao Supply Management Administrator University of Guam UOG Station Mangilao, Guam 96923 Phone: (671) 735-2925 Fax: (671) 735-3010 Email: eggumataotao@triton.uog.edu ; uog.bids@triton.uog.edu	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
	Mr. Anthony R. Camacho, Esq. Legal Counsel University of Guam UOG Station Mangilao, Guam 96923 Email: arcamacho@triton.uog.edu	Pages:	10 (including cover page)
CC:	Mr. Sedfrey Linsangan President Guam Pacific Enterprise, Inc. Phone: (671) 649-6994/7/8 Email: guampacific@gmail.com	Date:	October 20, 2021
		Phone:	(671) 475-0390 x. 204
		Fax:	(671) 472-7951

Re: OPA-PA-21-011 Notice of Receipt of Appeal

For Review

Please
 Comment

Please Reply

Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

Exhibit 2



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910
Phone: (671) 475-0390 / FAX: (671) 472-7951

October 20, 2021

Ms. Emily G. Gumataotao
Supply Management Administrator
University of Guam
UOG Station
Mangilao, Guam 96923

VIA FACSIMILE: (671) 735-3010

Re: Notice of Receipt of Appeal – OPA-PA-21-011

Dear Ms. Gumataotao,

Please be advised that Guam Pacific Enterprises Inc. (hereinafter referred to as "GBE INC" filed an appeal with the Office of Public Accountability (OPA) on October 19, 2021, regarding the University of Guam's (UOG) procurement award for UOG Bid B21-10 for Air Purifier system and Replacement Filter. OPA has assigned this appeal case number OPA-PA-21-011.

Immediate action is required of UOG 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 eight 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 **Wednesday, October 27, 2021**, 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 **Thursday, November 4, 2021**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and one copy to OPA (electronic filings will be acceptable), and serve a copy to GBE INC. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that UOG provide one original and one electronic file of the said record, which

will be distributed as follows: Copy-1: Master File; and Copy-2: Public Auditor and/or Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 204 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Seven Pages of the Notice of Appeal – OPA-PA-21-011

Cc: Sedfrey M. Linsangan, GPE Inc. President



Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

PART I- To be completed by OPA

In the Appeal of)
) **NOTICE OF APPEAL**
Guam Pacific Enterprises Inc.)
(Name of Company), APPELLANT) Docket No. OPA-PA _____
)
)

PART II- Appellant Information

Name: Guam Pacific Enterprises Inc.
Mailing Address: P.O. Box 2312 Barrigada
Guam 96921
Business Address: #202 Harmon Industrial
Park, Guam
Email Address: guam.pacific@gmail.com
Daytime Contact No: 649-6997-8-4
Fax No.: 649-6988

PART III- Appeal Information

- A) Purchasing Agency: University of Guam
- B) Identification/Number of Procurement, Solicitation, or Contract: UOG Bid No. B21-10
- C) Decision being appealed was made on Oct. 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

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

J and B Modern Tech _____
Wang Bros. LLC _____
Decomo Pacific _____

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 19 day of Oct., 2021.

By: 
APPELLANT

or

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

Concise Statement

Bid was held on May 20, 2021. It was awarded to Docomo on June 7, 2021. Then the Bid Status was made on July 1, 2021. But it was not emailed to my company. I was following up in June, July and August many times but no response about the status of the Bid. On Sept. 2, 2021, Ms. Gumataotao emailed me that it was an oversight on her part. I disagree, since everyday that you open your computer the Draft is showing on Red Words.

Please see Exhibits 1-6.

My main argument is Docomos offer is not designed, not compliance to the Intention and Background of the Bid for classrooms, offices, auditoriums

and other indoor spaces located in the College of Liberal Arts and Social Science. Please see Exhibit 7, catalog or and specs of Aura Air that specifies that it's only use or purpose is for home only. Please see Exhibit 8, our offer which is designed and ideal for use in offices, classrooms, conference rooms, daycares, restaurants, bathrooms, boats and locker rooms.

VOG did not adhere to several Guam Procurement laws. (Please Exhibit 9) The authors of the bid are Ms. Emily Gumatao tao and Mr. John Del Castillo that are not Engineers, Architects, Designer and Draftsman for public contracts.

(Violation of Section 5266 Chapter 5, 56CA)

That is the reason why they select the

wrong product or purifier that does not served the purpose because they are not qualified to prepare and evaluate the bid. If the right people author the bid then there will be no protest.


Then, the other violation is the Buy American Act. Aura Air is made in Israel not in USA. I will reply to this issue within 7 days together with the \$25.00 fee. Please see review for Aura Air that indicated Trading Air Pollution for Noise Pollution in your home. (Exhibit 10)

I am requesting that the ruling provides that VOB procurement erred in the administration of Bid process consistent with the Guam Procurement laws. That VOB should take out or dismantle the wrong purifiers because it is a health hazards to

Students and workers and the public.
If UOG has still the funds to buy the right purifier then they can solicit through the Daily RFQ without resorting to time consuming Bids because we are still in Emergency. If they do not have the funds then it is better not to have the wrong purifier.

I am also requesting that all procurement staff of UOG undergo training or work session in order to improve their skills and knowledge on rules, laws governing procurement.

Dated: Oct. 19, 2021

Respectfully Submitted

Sedfrey M Linsangan
Pro Se

UOG Bid No. B21-10 Air Purifier (Electronic Copy Request)

GPE INC <guampacific@gmail.com>

Tue 5/4/2021 3:24 PM

To: UOG Procurement Bids <uog.bids@triton.uog.edu>

[EXTERNAL EMAIL - Please use caution when opening attachments or clicking links.]

Hi Jade,

Please send us an electronic copy of **UOG Bid No. B21-10 (Air Purifier System and Replacement Filters)**.

Thank you.

Respectfully,

--

Sed Linsangan

Guam Pacific Enterprise, Inc.

Tel: (671) 649-6994/7/8



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--

Guam Pacific Enterprise, Inc.

Tel: (671) 649-6994/7/8

Exhibit 3

Re: UOG Bid No. B21-10 Air Purifier (Electronic Copy Request)

UOG Procurement Bids <uog.bids@triton.uog.edu>

Tue 5/4/2021 5:11 PM

To: GPE INC <guampacific@gmail.com>

Bcc: Procurement Office <procurementoffice@triton.uog.edu>

Håfa Adai & Good Afternoon,

Pursuant to our bid requirements, " **BID PACKET FORM. A non-refundable fee of \$25.00 (U.S.) will be charged for each bid packet requested. All payments shall be made by cash, certified check or moneyorder to the University of Guam. Cashier services located at the UOG Administration Building Mon-Fri from 8am-4pm by appointment only. Pay by phone is also available from 8am-4pm at 735-2923/45/46.** "

Please forward proof of receipt so we can register and send you copy of bid packet. Thank you!

Si Yu'os ma'ase' & Have a nice day!.



Respectfully,
Emily G. Gumataotao
SUPPLY MANAGEMENT ADMINISTRATOR
PROCUREMENT | ADMIN & FINANCE
Office: 671-735-2925
Fax: 671-735-3010
uog_bids@triton.uog.edu

The University of Guam is an equal opportunity provider and employer.

Re: UOG Bid No. B21-10 Air Purifier (Electronic Copy Request)

GPE INC <guampacific@gmail.com>

Tue 5/4/2021 6:12 PM

To: UOG Procurement Bids <uog.bids@triton.uog.edu>

[EXTERNAL EMAIL - Please use caution when opening attachments or clicking links.]

Hafa Adai,

This is to acknowledge receipt of your email.

Please send us the electronic copy of UOG Bid No. B-21-10.

Thank you.

Sed

GPE

On Tue, 4 May 2021 at 17:11, UOG Procurement Bids <uog.bids@triton.uog.edu> wrote:

Hafa Adai & Good Afternoon,

Pursuant to our bid requirements, "**BID PACKET FORM**. A non-refundable fee of **\$25.00 (U.S.)** will be charged for each bid packet requested. All payments shall be made by cash, certified check or moneyorder to the University of Guam. Cashier services located at the UOG Administration Building Mon-Fri from 8am-4pm by appointment only. Pay by phone is also available from 8am-4pm at 735-2923/45/46. "

Please forward proof of receipt so we can register and send you copy of bid packet. Thank you!

Re: UOG Bid No. B21-10 Air Purifier (Electronic Copy Request)

UOG Procurement Bids <uog.bids@triton.uog.edu>

Wed 5/5/2021 12:10 PM

To: GPE INC <guampacific@gmail.com>

Bcc: Procurement Office <procurementoffice@triton.uog.edu>

Håfa Adai & Good Afternoon Sed,

I do not see proof of receipt to send the bid package and just confirming your messages were received from Ms. Jade.

Excerpt from UOG Procurement Regulation below:

3.9.6.1. DISTRIBUTION (GSA Section 3-202.06.1). Invitations for Bids or Notices of the Availability of Invitation for Bids *Where appropriate, the President may require payment of a fee or a deposit for the supplying of the Invitation for Bids.*

This has been in the UOG procurement regulations even during previous administration; Unfortunately, I am unable to answer as to why the processes were different from my pre-decessors.

Apologize for any inconvenience this may have caused. Once I receive your proof of receipt I will be glad to send you the electronic bid packet.

Si Yu'os ma'åse' & Have a nice day!.



UNIVERSITY OF
GUAM
UNIBERTSEDA' GUÅHAN

Respectfully,

Emily G. Gumataotao

SUPPLY MANAGEMENT ADMINISTRATOR

PROCUREMENT | ADMIN & FINANCE

Office: 671-735-2925

Fax: 671-735-3010

uog_bids@triton.uog.edu

05-05: UOG Bid No. B21-10 Air Purifier (Electronic Copy Request)

GPE INC <guampacific@gmail.com>

Wed 5/5/2021 1:22 PM

To: UOG Procurement Bids <uog.bids@triton.uog.edu>

[EXTERNAL EMAIL - Please use caution when opening attachments or clicking links.]

Hi Emily,

Thank you for your response. The language specified "The President may require payment of a fee" Did the President enforce that stipulation because the past Administrator did not require us to pay unless we participated in the bid? Second, did you get written authorization from the President? Please send us a copy of that authorization.

Thank you for your understanding.

Very Respectfully

Sedfrey M. Linsangan

On Wed, 5 May 2021 at 12:11, UOG Procurement Bids <uog.bids@triton.uog.edu> wrote:

Hāfa Adai & Good Afternoon Sed,

I do not see proof of receipt to send the bid package and just confirming your messages were received from Ms. Jade.

Excerpt from UOG Procurement Regulation below:

3.9.6.1. DISTRIBUTION (GSA Section 3-202.06.1). Invitations for Bids or Notices of the Availability of Invitation for Bids
.... *Where appropriate, the President may require payment of a fee or a deposit for the supplying of the Invitation for Bids.*

This has been in the UOG procurement regulations even during previous administration; Unfortunately, I am unable to answer as to why the processes were different from my pre-decessors.

Apologize for any inconvenience this may have caused. Once I receive your proof of receipt I will be glad to send you the electronic bid packet.

05-05: UOG Bid No. B21-10 Air Purifier (Electronic Copy Request)

GPE INC <guampacific@gmail.com>

Wed 5/5/2021 1:22 PM

To: UOG Procurement Bids <uog.bids@triton.uog.edu>

[EXTERNAL EMAIL - Please use caution when opening attachments or clicking links.]

Hi Emily,

Thank you for your response. The language specified "The President may require payment of a fee" Did the President enforce that stipulation because the past Administrator did not require us to pay unless we participated in the bid? Second, did you get written authorization from the President? Please send us a copy of that authorization.

Thank you for your understanding.

Very Respectfully

Sedfrey M. Linsangan

On Wed, 5 May 2021 at 12:11, UOG Procurement Bids <uog.bids@triton.uog.edu> wrote:

Háfa Adai & Good Afternoon Sed,

I do not see proof of receipt to send the bid package and just confirming your messages were received from Ms. Jade.

Excerpt from UOG Procurement Regulation below:

3.9.6.1. DISTRIBUTION (GSA Section 3-202.06.1). Invitations for Bids or Notices of the Availability of Invitation for Bids ...*Where appropriate, the President may require payment of a fee or a deposit for the supplying of the Invitation for Bids.*

This has been in the UOG procurement regulations even during previous administration; Unfortunately, I am unable to answer as to why the processes were different from my pre-decessors.

Apologize for any inconvenience this may have caused. Once I receive your proof of receipt I will be glad to send you the electronic bid packet.

Re: 05-05: UOG Bid No. B21-10 Air Purifier (Electronic Copy Request)

GPE INC <guampacific@gmail.com>

Wed 5/5/2021 2:59 PM

To: UOG Procurement Bids <uog.bids@triton.uog.edu>

[EXTERNAL EMAIL - Please use caution when opening attachments or clicking links.]

Just to add that no Gov. Guam Agency charges fees if Bid packet is sent through email.

On Wed, 5 May 2021 at 13:22, GPE INC <guampacific@gmail.com> wrote:

Hi Emily,

Thank you for your response. The language specified "The President may require payment of a fee" Did the President enforce that stipulation because the past Administrator did not require us to pay unless we participated in the bid? Second, did you get written authorization from the President? Please send us a copy of that authorization.

Thank you for your understanding.

Very Respectfully

Sedfrey M. Linsangan

On Wed, 5 May 2021 at 12:11, UOG Procurement Bids <uog.bids@triton.uog.edu> wrote:

Hāfa Adai & Good Afternoon Sed,

I do not see proof of receipt to send the bid package and just confirming your messages were received from Ms. Jade.

Excerpt from UOG Procurement Regulation below:

3.9.6.1. DISTRIBUTION (GSA Section 3-202.06.1). Invitations for Bids or Notices of the Availability of Invitation for Bids
.... *Where appropriate, the President may require payment of a fee or a deposit for the supplying of the Invitation for Bids.*

This has been in the UOG procurement regulations even during previous administration; Unfortunately, I am unable to answer as to why the processes were different from my pre-decessors.

Re: 05-05: UOG Bid No. B21-10 Air Purifier (Electronic Copy Request)

GPE INC <guampacific@gmail.com>

Thu 5/6/2021 10:45 AM

To: UOG Procurement Bids <uog.bids@ritron.uog.edu>

[EXTERNAL EMAIL - Please use caution when opening attachments or clicking links.]

Good morning Emily,

I am respectfully requesting for an extension up to May 18. Reasons are the following;

1) Since we are the Distributor of Air Purifier, our request should be granted for the best interest of the people of Guam to get the best price possible.

2) There is a pending disagreement on the regulation relative to the imposition of \$ 25.00 fee. The language used is may which is not mandatory that is subject to the President of UOG's discretion. If the President has no authorization then the fee should not be imposed even we participated in the Bid just like all the Gov. Guam Agencies practices unless we request a hard copy.

Please refer my grievance to your Supervisor or adhere to the protocol on disagreement. Thank you for giving me the opportunity to discuss my concerns and be of service to you. Please advise.

Very Respectfully,

Sedfrey M. Linsangan

President, Guam Pacific Enterprises Inc.

On Wed, 5 May 2021 at 14:58, GPE INC <guampacific@gmail.com> wrote:

Just to add that no Gov. Guam Agency charges fees if Bid packet is sent through email.

On Wed, 5 May 2021 at 13:22, GPE INC <guampacific@gmail.com> wrote:

Hi Emily,

Thank you for your response. The language specified "The President may require payment of a fee" Did the President enforce that stipulation because the past Administrator did not require us to pay unless we participated in the bid? Second, did you get written authorization from the President? Please send us a copy of that authorization.

Thank you for your understanding.

Re: **B21-10: AIR PURIFIER SYSTEM and REPLACEMENT FILTERS - AMENDMENT 1**

GPE INC <guampacific@gmail.com>

Mon 5/10/2021 10:43 AM

To: UOG Procurement Bids <uog.bids@triton.uog.edu>

[EXTERNAL EMAIL - Please use caution when opening attachments or clicking links.]

Good morning Emily,

I am waiting for your determination on the \$ 25.00 fee. We will respect your decision and we will decide if we will proceed with the bid or not. In case you impose the fee , then our disagreement can be tabled on another time. Kindly advise.

Very Respectfully,
Sedfrey M. Linsangan

On Fri, 7 May 2021 at 15:53, GPE INC <guampacific@gmail.com> wrote:

Thank you for your email and bid extension. I am still waiting for your response on the \$25.00 fee that I am disputing. Please advise .

On Fri, 7 May 2021 at 15:19, UOG Procurement Bids <uog.bids@triton.uog.edu> wrote:

Häfa Adai & Good Afternoon,

Please see attached notice for the above referenced BID B21-10: **AIR PURIFIER SYSTEM and REPLACEMENT FILTERS : AMENDMENT 1.**

Kindly acknowledge receipt by COB, Monday, May 10, 2021.

Si Yu'os ma'áse' & Have a nice day!;

Fwd: B21-10 GUAM PACIFIC ENTERPRISE INC

GPE INC <guampacific@gmail.com>

Tue 5/11/2021 10:22 AM

To: UOG Procurement Bids <uogbids@triton.uog.edu>

[EXTERNAL EMAIL - Please use caution when opening attachments or clicking links.]

Good morning,

Please see receipt below for the bid. Kindly email to us the bid documents.

**Very Respectfully,
Sedfrey M. Linsangan**

----- Forwarded message -----

From: **Pangelinan, April Lynn** <pangelinanal@triton.uog.edu>

Date: Tue, 11 May 2021 at 10:07

Subject: B21-10 GUAM PACIFIC ENTERPRISE INC

To: guampacific@gmail.com <guampacific@gmail.com>

Hafa Adai,

Please see the email below of your receipt.

Si Yu'os ma'åse',

April L.C. Pangelinan
Cashier II

Administration & Finance

Office: +1 (671) 735-2923

pangelinanal@triton.uog.edu

<https://www.uog.edu/it>



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From: bursar@triton.uog.edu <bursar@triton.uog.edu>
Sent: Tuesday, May 11, 2021 10:05 AM
To: Pangelinan, April Lynn <pangelinan@triton.uog.edu>
Subject: UOG- Thank you for your payment

Receipt Number: 184711
Customer: MISC
UOG Main Cashiers
Current Date: 05/11/2021

Description	Amount
Non Appn Fa-Bid Fee	\$25.00
Dept. Name: CBID B21-10 GUAM PACIFIC ENTERPRISE INC.	
Total	\$25.00

Payments Received

Amount

CC
MasterCard XXXXXXXXXXXXX7707 \$25.00
Authorization # 434435
Total \$25.00

Guam Pacific Enterprise, Inc.
Tel: (671) 649-6994/7/8



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Re: B21-10 GUAM PACIFIC ENTERPRISE INC

UOG Procurement Bids <uog.bids@triton.uog.edu>

Tue 5/11/2021 12:11 PM

To: GPE INC <guampacific@gmail.com>

Bcc: Procurement Office <procurementoffice@triton.uog.edu>

Häfa Adai & Good Morning Sedfrey,

As requested, see attached bid package & Amendment 1 & 2 issued. Also, just FYI, there will be another amendment forthcoming for this bid.

Please acknowledge receipt. Thank you!

Si Yu'os ma'äse' & Have a nice day!;



UNIVERSITY OF
GUAM
UNISETSEDAT GUÅHRAN

Respectfully,

Emily G. Gumataotao

SUPPLY MANAGEMENT ADMINISTRATOR

PROCUREMENT | ADMIN & FINANCE

Office: 671-735-2925

Fax: 671-735-3010

uog.bids@triton.uog.edu

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Re: B21-10: AIR PURIFIER SYSTEM and REPLACEMENT FILTERS - Bid SHARE Folder Link for Bid Submission & ZOOM Link for Bid Opening

GPE INC <guampacific@gmail.com>

Thu 5/20/2021 4:30 PM

To: UOG Procurement Bids <uog.bids@triton.uog.edu>

[EXTERNAL EMAIL - Please use caution when opening attachments or clicking links.]

Hi UOG,

If the University is using Federal funds on this bid or project, the Buy American Act should be adhered to. Second, is my status as a US veteran as protected by Guam Procurement Law, pursuant to 5G.C.A. Section 5011.

I am a service - disabled veteran business owner that met all of the qualifications under 5GCA, Section 5012

Very Respectfully,

Sedfrey M. Linsangan

President, serviced disabled veteran (Recognized)

Guam Pacific Enterprises Inc.

On Thu, 20 May 2021 at 09:10, UOG Procurement Bids <uog.bids@triton.uog.edu> wrote:

Håta Adai & Good Morning,

Please utilize the link below to submit your bid submission. Kind reminder to submit one (1) PDF file. Also, please ensure your original bid security has been received by procurement office before bid deadline.

https://uguanliveuog-my.sharepoint.com/:f/g/personal/uog_bids_triton_uog_edu/EjO4bAJK01LplzDm0pw6moB6D69ALZmY-5G55firGn6qQ

Bid Opening will be conducted @ 330pm today, via ZOOM link below:

<https://zoom.us/j/92050190340>

Please let me know if you have any issues.

Exhibit 4

UOG BID B21-10: NOTICE OF AWARD - DOCOMO PACIFIC

UOG Procurement Bids <uog.bids@triton.uog.edu>

Tue 6/8/2021 11:55 AM

To: Eleonor Lujan-Toves <elujan-toves@docomopacific.com>; Brianna J. Tajeron <btajeron@docomopacific.com>

Cc: Procurement Office <procurementoffice@triton.uog.edu>; JOHN JASON Adriano DEL CASTILLO <delcastilloj@triton.uog.edu>; Doreen Fernandez <dfernandez@triton.uog.edu>

Hafa Adai & Good Afternoon,

See attached Notice of Award.

Please acknowledge receipt by returning signed copy.

Congratulations & Stay safe 🙏

Si Yu'os mat'ase' & Have a nice day!;

Exhibit 5



**UNIVERSITY OF
GUAM**
UNIBETSEDAT GUAHAN

Respectfully,

Emily G. Gumataotao

SUPPLY MANAGEMENT ADMINISTRATOR
PROCUREMENT | ADMIN & FINANCE

Office: 671-735-2925

Fax: 671-735-3010

uog.bids@triton.uog.edu

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