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**RE: OPA-PA-24-005 In the Appeal of Pacific Federal Management, Inc.**

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Jamaica Nakama &lt;jnakama@arriolafirm.com&gt;

Fri, Feb 21, 2025 at 4:34 PM

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Hafa Adai,

Please see the attached Proposed Findings and Brief on Remedies for filing.

Kind regards,

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**2 attachments** **Remedies Brief.pdf**  
134K **Proposed FFCL.pdf**  
189K

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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEAL**

**In the Appeal of**

APPEAL CASE NO.: OPA-PA-24-005

**PACIFIC FEDERAL MANAGEMENT  
INC.,**

**[PROPOSED]  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Appellant.

ARRIOLA LAW FIRM HAGÁTÑA, GUAM 96910

**COMES NOW**, the ARRIOLA LAW FIRM, LLC through the undersigned counsel, and on behalf of the A.B. Won Pat Guam International Airport Authority (“GIAA”), to submit GIAA’s Proposed Findings of Fact and Conclusions of Law based on the evidence and testimony presented on January 29, 2025.

**FACTUAL BACKGROUND**

The Public Auditor makes the following findings of fact:

1. IFB No. GIAA-C07-FY24 Terminal Roof Replacement and Renewable Energy System -Phase I (the “IFB”) was issued and made available on GIAA’s website on May 22, 2024.
2. At the time the IFB was issued, the Guam Contractor’s License Board (“GCLB”) codified Rules and Regulations in 3 places: 25 GAR Chapter 12 (Exhibit C), 29 GAR Chapter 1, Article 4 (Exhibit D) and on the GCLB website (Exhibit B): <https://guamclbcom.wordpress.com/wp-content/uploads/2016/09/rules-and-regulations.pdf>

3. The GCLB subsequently adopted new rules and regulations through the Guam Administrative Adjudication Law in July 2024 (Exhibit E).
4. Currently, the Rules enacted in July 2024 governs licensing of contractors in Guam.
5. A PFM representative downloaded the IFB package on May 30, 2024.
6. The IFB required bidders to include in their bid *inter alia* copies of valid Guam Contractor’s Board license(s) – Classification A, B, C-8, C-13, C-33, C-37, C-41, C-42, C-48, C-51, C-55 and C-56.” Procurement Record (“PR”) at p. 40.
7. GIAA determined the scope of work, including the contractor’s license requirements with the assistance of a third-party designer, Mr. Roger Nochefranca, P.E., of Evangelista-Acabado Engineers, Inc. dba E&A Engineers.
8. The Bid Form in the IFB indicated that the contractor’s license(s) would have to be submitted with the sealed bid in response to the IFB. IFB pp. PR at p. 46.
9. The Bidder’s Qualification Statement similarly indicated that bidders would have to submit their contractor’s license(s) with their sealed bid. PR at p. 77.
10. The form contract included with the IFB also indicated at Section 10.6 that the contractor warranted it was “duly licensed and authorized to transact the business of construction under the applicable laws of Guam.” PR at pp. 101-102.
11. PFM submitted its bid on July 5, 2024. PR at p. 1682 *et seq.* In its Bid, PFM check marked box 28 of the required forms, Mr. Robert Salas II executed the required forms checklist and submitted the same as part of PFM’s Bid. PR. at p. 1686.
12. PFM provided the names of two subcontractors in a designation of contractors form. PR at p. 72.
13. PFM executed and submitted the Bidder’s Qualification Statement and submitted its and its subcontractors’ contractor’s licenses. PR. at pp. 1729, 1765-1766, 1834-1838.

14. PFM noted in its bid, “PFM hereby submits the following Guam Contractor’s Licenses. *Our team will obtain remaining licenses upon contract award.*” PR at 1833 (*emphasis added*).
15. PFM provided a signed contract. PR at pp. 1793-1808.
16. GIAA received two other bids from Core Tech International Corporation (“Core Tech”) and Green Community Development dba Surface Solutions (“Surface Solutions”) in response to the IFB.
17. GIAA determined that only Core Tech submitted proof with its bid that it or its subcontractors possessed the GCLB licenses required to be submitted with its sealed bid.
18. Like PFM, Surface Solutions also submitted proof of only some, but not all contractor’s licenses.
19. Surface Solutions possesses A, B and certain C licenses from the GCLB.
20. GIAA subsequently contacted the GCLB to confirm that neither PFM nor its subcontractors, and Surface Solutions nor its subcontractors, possessed all the GCLB licenses required by the IFB. PR at p. 2097.
21. The GCLB requires a C-license in addition to an A and B license if an A or B licensed contractor is performing work specifically requiring a C-specialty license. The GCLB requires a C-license under any contract where 35% or more of the work includes work covered by that specialty license.
22. After reviewing the licensure of the bidders with the GCLB, GIAA prepared for the award related to this procurement with the assistance and approval of the Office of the Attorney General (“OAG”) pursuant to 5 G.C.A. Section 5150.
23. Licensure at the GCLB is not automatic, a contractor needs to qualify through an application and examination for each and every license type; A and B, and each and every 70 C-licenses. (See Ex. E at pp. 41 *et seq.*)
24. A contractor also needs a Responsible Management Employee (“RME”) who qualifies through an application and for each license and every A and B and each of the 70 C-license(s) sought.

25. If a contractor or an RME fails the test for a specific license twice, they will need approval from the GCLB Executive Director to take the test, and a third test if either fails a third time, then there is a 1 year waiting period before the contractor or RME can take the examination again.
26. License tests are offered up to two days out of a month, and at most a contractor or RME can test for one or two licenses on a test day.
27. GIAA issued a notice of award to Core Tech and gave notice of the same to Surface Solutions and PFM on or about August 19, 2024. PR at p. 1858.
28. Because the procurement record was in the process of being, but was not yet certified and due to procedural requirements of the OAG that further delayed certification, GIAA stayed the procurement upon receipt of PFM’s August 29, 2024 letter of protest. PR at pp. 1856-857.
29. GIAA denied PFM’s protest in full on October 14, 2024 after an intervening attempt at informal resolution.
30. PFM filed the notice of appeal in this matter on October 29, 2024.

**ARGUMENT**

**I. PFM failed to timely protest GIAA’s requirement of specific GCLB licensure at bid submission.**

Bidders who “may be aggrieved in connection with the method of source selection, solicitation, or award of a contract” may invoke Guam’s procurement protest and appeal statutory scheme. 5 G.C.A. § 5425(a). An aggrieved individual must submit a protest within fourteen (14) days after such aggrieved individual knows or should know the facts giving rise thereto. 5 G.C.A. § 5425(a). A timely protest is a jurisdictional requirement of the procurement protest and appeal scheme. Teleguam Holdings, LLC v. Guam, 2018 Guam 5 ¶¶ 20-21; DFS Guam L.P., 2020, Guam 20 ¶¶ 77, 81-87 (“a protest filed more than 14 days after the disappointed offeror or bidder had notice of the grounds for

the protest is barred as untimely.”). DFS Guam L.P., 2020, Guam 20 ¶ 87. The Supreme Court recently affirmed that without a timely protest as to each and every claim, the OPA has no jurisdiction to consider those claims not timely raised. Pac. Data Sys. v. Guam Dep’t of Educ., 2024 Guam 4 ¶ 22 et seq (reiterating DFS holding that the statutory timelines in the procurement and appeal scheme are jurisdictional as to each and every claim).

Here, PFM’s protest is based on requirements expressly stated in the IFB. As stated above, several places in the IFB made clear that proof of possession of valid contractor’s licenses with classifications: A, B, C-8, C-13, C-33, C-37, C-41, C-42, C-48, C-51, C-55, and C-56 was required to be submitted with a sealed bid in response to the IFB. PR at p. 40

PFM received the IFB on May 30, 2024. PFM’s protest raises two separate points: (1) that A and B license holders do not need C-licenses, and (2) that GIAA’s requirement that licenses be submitted with a bid in response to the IFB was improper. PFM was on notice of these bases of protest as of May 30, 2024 and therefore had 14 days from that date to protest GIAA’s express requirements.

When PFM submitted its bid on July 5, 2024, PFM knew it did not have all the licenses required of the IFB. 14. PR at 1833 (“PFM hereby submits the following Guam Contractor’s Licenses. Our team will obtain remaining licenses upon contract award”).

PFM’s protest on August 29, 2024, was therefore not made within 14 days of when it knew of the two bases for its protest. PFM’s protest was untimely and the OPA lacks jurisdiction over this appeal.

**II. GCLB licenses were required at the time of bid submission because PFM executed a contract for GIAA to countersign.**

GIAA determined PFM’s bid was nonresponsive because it failed to submit proof of certain contractor’s licenses that were required to be submitted with its bid.

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Guam’s procurement law is based on the Model Procurement Code. See Data Management Res., LLC v. Office of Public Accountability, 2013 Guam 27 ¶ 56. A bidder’s responsiveness under Guam law concerns whether said bidder’s bid conforms in all material respects to the requirements in the invitation for bids. See 5 G.C.A. § 5201(g). This is similar to the Hawaii procurement law which is also based on the Model Procurement Code. S. Foods Grp., L.P. v. State, Dep’t of Educ., 974 P.2d 1033, 1049 (Haw. 1999) (“[q]uestions of the ‘responsiveness’ of [a] bid ... relate to ‘conformity with the invitation’ and are generally not curable after bid opening.”); see also, Nihi Lewa, Inc. v. Dep’t Of Budget And Fiscal Servs., 80 P.3d 984, 988 (Haw. 2003) (“The Hawai‘i Public Procurement Code is based, in part, on the Model Code.”).

Here, GIAA’s requirement of licensure at bid submission acknowledged:<sup>1</sup> (1) that the bidder had to submit a signed contract with its bid, (2) the technical nature of the work to be procured, and (3) the requirements in Guam law that Contractors who perform such technical work must hold licenses issued by the GCLB. As in Hawaii, GIAA can set out its minimum requirements in an IFB. See Alpha, Inc. v. Bd. of Water Supply, 555 P.3d 173, 182 (Haw. 2024) (recognizing when the Government procures, it can set its requirements, including related to contractor licensure that may be greater than minimum legally required licensure). If PFM disputed the license requirements, PFM should have protested the license requirements, and not waited until the plain requirement was enforced against PFM’s non-responsive bid.

The IFB language is clear and unambiguous:

**SPECIAL REMINDER TO PROSPECTIVE BIDDERS**

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<sup>1</sup> In its Hearing Brief, Surface Solutions suggested GIAA must demonstrate why it required licensure at bid submission. First GIAA can set its own requirements so long as they are not contrary to law. See Alpha, Inc., 555 P.3d at 182. However, GIAA also had a recent procurement stayed for several years because GIAA did not require GCLB-required licensure at the time of proposal submission in the RFP setting. See OPA-PA-23-002, GIAA’s PFFCL (Nov. 17, 2023). Testimony at the hearing also established that agencies in the Government differ on when they require GCLB and other specialty licenses in the procurement process.

Bidders are reminded to read the entire IFB to ascertain that all of the requirements of the IFB are submitted in a sealed envelope on or before the Bid Submission Deadline set forth in the Schedule of Events.

**Bidder’s bid submission must include all of the following items/documents organized and tabulated in the following order: . . .**

28.	<u>Other Requirements.</u> Copy of valid Contractor’s license – Classification A, B, C-8, C-13, C-33, C-41, C-42, C-48, C-51, C-55 and C-56.
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PR at pp 38-40 (emphasis in original). If PFM believed it only needed an A and B license, and not the C licenses listed, PFM was on notice as of May 30, 2024 and should have protested the C-license requirements. PFM’s bid conceded they did not hold but were aware of the C-license requirements.

On submission of its bid, PFM submitted an executed contract that only needed to be countersigned by GIAA. GIAA could not execute a contract for work to be performed by PFM because it was not licensed to perform the work. GIAA also could not wait the indefinite period necessary for PFM to secure other licenses from the GCLB as the testimony made clear, the process is dependent on *inter alia* (1) the contractor and RME qualifying for and passing an examination for each license designation and (2) submission of required information outside of the GCLB and contractor’s control, i.e. other Government Agency action.

Thus, GIAA had no choice but to reject PFM’s bid. GIAA issued the Notice of Award to Core Tech and but for administrative delays caused by the lack of a Special Assistant Attorney General designation for GIAA’s counsel, would have executed the contract submitted by Core Tech before PFM’s protest was filed.

**III. PFM and its subcontractors do not hold the appropriate licenses to perform the work set out in the IFB.**

PFM alleges in its appeal that as a holder of the A and B license contractor’s license classifications, PFM is “automatically deemed to hold a license for all specialties listed under 25 GAR

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§ 12106(a).” Notice of Appeal at p. 7 (Oct. 29, 2024). Similar to the protest level, PFM ignores the logical organization of 25 GAR § 12106(a) which has three separate licensee classification categories in subsections (a)(1), (a)(2) and (a)(3) – for A, B, and C. See also, GIAA Ex. E, p 42 of 54, § 12401. At the hearing, PFM also argued that the codification of the GCLB Rules (Exhibits B, C, D) in different places in 2024, somehow weakened GIAA’s position in this matter.

Notably, PFM did not raise the codification of the GCLB rules in different places as a basis of protest at the agency level – thus the Public Auditor has no jurisdiction to grant relief because of the codification in the rules in different places. PFM also ignores the relevant provisions use the same language across the codifications in effect pre-July 2024. Each of the codifications will be cited when relevant to demonstrate the use of the same language.

A and B licensees also cannot “act, assume to act or advertise as a specialty contractor *except for the specialties in which he is licensed.*” 25 GAR 12107(b)(1) (*emphasis added*) (Ex. C); 29 GAR, Div. 4 § 1423 (Ex. D), GCLB Website Section 7.2 (Ex. B), see also GIAA Ex. E, p. 43 of 54, § 12502(a). Other provisions of Guam law go even further. Guam law prohibits acting as a contractor of any type without the required license. 21 G.C.A. § 70108(a) (“No person . . . shall act, or assume to act or advertise, as a general engineering contractor, a general building contractor or a specialty contractor without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the . . . [G]CLB.”). Additionally, Guam law makes clear that an A or B license holder, is required to separately and specifically be designated as a specialty licensee. See 21 G.C.A. § 70106(c) (clarifying that a B-licensed General Building Contractor is engaged in a principal contracting business “requiring in its construction the use of *more than two unrelated building trades or crafts*, or to do or superintend the whole or any part thereof” (*emphasis added*)); see also, 21 G.C.A. § 70107 (“A licensee may make application for classification and be classified in more than one (1)

classification if the licensee meets the qualifications prescribed by the Board for such additional classification. For qualifying or classifying in additional classifications, the licensee shall pay the appropriate application fee but shall not be required to pay any additional license fee.”).

Section 70107 requires a licensee to apply for additional classifications and prohibits an A and B licensee from “act[ing] assum[ing] to act or adverti[ing] as a specialty contractor except for the specialties in which he is licensed.” PFM also conveniently ignores it conceded it lacked sufficient licensure in its bid where it proposed to submit the licenses it lacked, at award. PR at 1833 (“PFM hereby submits the following Guam Contractor’s Licenses. Our team will obtain remaining licenses upon contract award.”).

The GCLB “has primary jurisdiction to make determinations of matters within its authority, and such decisions are entitled to deference unless contrary to law or unsupported by substantial evidence.” Gov’t Guam v. Gutierrez ex rel Torres, 2015 Guam 8 ¶ 16.

The GCLB issues A and B licensees C category licenses. See GCLB Contractor’s Listing available at <https://clb.guam.gov/index.php/contractors-listing/>; see also PR at 1383-1386 (GCLB Licenses for Core Tech International and Subcontractors with A, B, and C license classifications); PR at p. 1678-79 (GCLB License and RME License listing Surface Solutions A, B and C license classifications); PR at p. 1680 (GCLB Verification of License Document confirming Surface Solutions C license classifications).

The OPA finds that GCLB A and B licensees are still required to obtain specialty C licenses to perform work requiring such licenses with specific and limited exceptions. See 25 GAR 12107(b)(1) (*emphasis added*) (Ex. C); 29 GAR, Div. 4 § 1423 (Ex. D); GCLB Rules, Section 7.2 (Ex. B); GIAA Ex. E, p. 43, § 12502(a); see also, 25 GAR § 12107(b)(4) (“General Building Contractors and Specialty Contractors holding proper licenses need not have a C-30 Limited Home Improvement and Renovation

contractor licenses to engage in home improvement and renovation contracting *in their own field*” (emphasis added)); GIAA Ex. E, p. 43, § 12502(a); 25 GAR § 12107(d) (“A licensee may obtain additional classifications by filing an application and meeting the requirements regarding experience in the classification requested”); GCLB Rules, Section 7.2 (Ex. B); 29 GAR, Div. 4 § 1423(4); GIAA Ex. E, p. 43 of 5, § 12504. PFM’s position that A and B licensees automatically hold all or some C-licenses without specific designation renders these statutory and regulatory provisions meaningless. PFM’s position also flies in the face of the GCLB requirements for qualification and testing contractors and their RMEs for each license classification applied for. Finally, PFM’s position runs counter to GCLB’s practice of issuing A and B licensees C-specialty licenses once they meet the qualification and testing requirements notwithstanding they may already hold an A or B license.

GIAA contacted the GCLB as part of its evaluation of bids. The GCLB confirmed that PFM does not possess the licenses required of the IFB. PR at 2097. The GCLB therefore also does not agree that all A and B license holders like PFM are automatically qualified in in all or some C Specialties listed under Section 12106(a) and required by the IFB.

Based on the foregoing, PFM’s protest and appeal that it is automatically deemed to or does hold all of the required GCLB specialty C licenses required by the IFB pursuant to 25 GAR 12106(a) due to its status as an A and B licensee is without merit.

### **CONCLUSION**

Based on the foregoing, the OPA hereby determines:

1. that PFM’s claims related to the Guam Contractor’s License statutory scheme are untimely and therefore barred.

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2. that PFM’s claims related to the Guam Contractor’s License statutory scheme are without merit and in conflict with the GCLB statutory and regulatory schemes and the GCLB’s regulation of contractors in Guam.
3. that GIAA’s actions related to the procurement were in accordance with applicable law and regulations and expressly rejects PFM’s allegations to the contrary.
4. that PFM’s appeal is a frivolous abuse of the protest and appeal process GIAA is hereby awarded attorney’s fees and costs pursuant to 5 G.C.A. § 5425(h)(2).
5. that PFM’s appeal is hereby dismissed and the stay on GIAA IFB C027 FY 24 shall be lifted if no appeal of this decision is filed within 14 days of the filing of this document.

This is the final administrative decision. The Parties are hereby informed of their right to appeal this Decision to the Superior Court of Guam, in accordance with Subarticle D of Article 9, of Title 5 of the Guam Code Annotated (GCA) § 5481(a) within fourteen (14) days after receipt of a Final Administration Decision. A copy of this Decision shall be provided to the parties and their respective attorneys, in accordance with 5 GCA § 5702, and shall be made available for review on the OPA website at [www.opaguam.com](http://www.opaguam.com).

IT IS SO ORDERED \_\_\_\_\_.

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**Benjamin J. F. Cruz**  
**Public Auditor of Guam**

Submitted by,  
**ARRIOLA LAW FIRM, LLC**  
 Counsel for GIAA

By:   
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**WILLIAM B. BRENNAN**