



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA 21-011, Opposition to Motion to Dismiss

GPE INC <guampacific@gmail.com>

Tue, Dec 14, 2021 at 12:57 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>, Vince Duenas <vduenas@guamopa.com>, Tony Camacho <antonioc@guamwaterworks.org>, "Gumataotao, Emily" <eggumataotao@triton.uog.edu>

Dear Mr. Hernandez,
Please see attachments relative to Opposition to Dismiss and confirm receipt of this email.

Very Respectfully,
Sedfrey M. Linsangan
President
Guam Pacific Enterprises Inc.

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



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BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM

In the Appeal of
Guam Pacific Ent. Inc.
Appellant
v.
University of Guam

Appeal No. OPA-PA-21-011
Opposition to Motion
to Dismiss

Appellant, Sedfrey M. Linsangan of Guam Pacific Ent. Inc. provides his Opposition to Motion to Dismiss of U.O.G.

Dated: Dec. 14, 2021


Sedfrey M. Linsangan
President of GPE INC.

Memorandum of Points and Authorities

Defense did not honor the agreement between him and OPA Cruz that the case will be dismissed without prejudice in order to cure the deficiencies of both parties. Please refer or hear the Notice of Status Hearing that was conducted on Sept. 21, 2021 for OPA-PA-21-006.

Hence, I filed an appeal to the OPA, numbered as OPA-PA-21-011. Prior to my filing, Defense emailed me asking clarifications about my grounds or claims for protest. I told him the issues we discussed in the Status Hearing and my Notice of Appeal or Appeal to OPA on Buy American Act, INCOMPLIANCE with the scope and background of DoComos offer and \$25 fee and Author of bid not qualified to author the bid.

The Defense honoring the agreement, issued a Protest Decision on October 18, 2021, signed by the VOG President. The decision responded to all my claims on Buy American Act, Incompliance with the Scope and background of Docomos offer \$25 fee and Author of the bid not qualified.

So what is the reason why the defense is making this improper motion? Simple, VOG erred and my claims are justified. Defense has no valid arguments that is why he introduced the Motion to Dismiss based on jurisdiction for the second time.

But Defense did not realized that I am doing VOG a favor rather than filing a complain to the U.S. Treasury or Federal Agency that have oversight on Financial Assistance Award. The violation could

Put at risk millions of Dollars or place the Financial Federal Awards under receivership. Due to wrong evaluation and Award, I lost a \$28,000 profit or more.

The ruling I am requesting is not to recover any monetary loss or any expenses and time incurred in this case. I am requesting just that the Procurement workers undergo schooling or work session to improve their skills on procurement relative to laws. I am requesting that VOG dismantle all Aura Air Purifiers because they are not suitable for the scope, intention, background of the bid. Last I am requesting that if they still have funds, procure the right purifiers through regular RFQ instead of time consuming bids since we are still in emergency.

VOG should be making a Motion to accept the ruling I am requesting because my claims, arguments are untenable. The more they resort to actions and arguments that have no merits, the more they will fall or lost the case since the arguments they are making and actions are backfiring on them.

For the sake of argument let me discuss the \$25.00 filing fee. I raised it up to Emily because only the President can impose that. But she did not respond. I have no choice but to pay the \$25.00 fee since the procurement amended the wording without the Presidents letter or approval.

Buy American Act Discussion

VOG is not acting in good faith because there is no Buy American Act provision in the bid documents. I only raised the issue

during the virtual hearing. I told Emily that "IF the Federal Funds will be used, then VOG need to complies with Buy American Act." I stated that the lowest bidder is made in Israel. But there is no response to the Procurement System. I also stated my status as Service Disable Veteran Owned Small business. The point here is "How could I protest if I do not have the information that the funds to procure the purifier is from Federal funds"?

Defense here is misguided since V.O.G. did not disclose the source of funds for this bid. I was only aggrieved when I received the Bid Status on September 2, 2021. That was 3 months past after I was notified because the award was given on June 7.

If there are deficiencies in my Protest, VOG failed to disclosed it to me so that I can fixed it. But it is obvious the Procurement are not aware of Disputes Clause and rules and regulation governing procurement. That oversight reason on their part is "We are not born yesterday" or Tell it to the Marines "I had been calling them since June, July and August many times to Jess and other Procurement people but no response on the bid status.

" VOG Defense that notification to Bidder's is not allowed

Pursuant to VOG Instruction to Bidders # 18, Notice of Award, VOG will notify all bidders the status of the Bid and intent to award. Written notice of award will be public information . . .

VOG's policy is consistent and appropriate to Section 5003 of Chapter 56CA Good faith, Subsection 4 and 7 of Section 5001 of Chapter 56CA Procurement laws (Equitable treatment of all parties in the procurement and to provide maintenance and safeguards of quality and integrity. Section 5002 - Supplementary General Principles of law and Equity.

There is no question that I was prejudiced because VOG acted in bad faith by not notifying me that it was already awarded to Docono. I could have filed my protest right away then they can issue Stay of Procurement unless the President makes a written determination that the award of the contract without delay is necessary to protect the substantial interest of University

Please refer to VOG - Regulation Section 9.2.5

But then again, VOG only responded when I filed an Appeal to OPA. VOG have, had demonstrated not to respond or notify bidders that the bid was already awarded to Docomo. There is the extraordinary circumstances for me to file early because I have the rational basis to do so to seek justice.

OPA can grant Relief

Defense misinterpreted Section 5452 of Chapter 5 GCA (a) because it only provides or refers to bidders that acted in bad faith. In this case Docomo did not act in bad faith because they present their offer but VOG mis-evaluated and erred in making the determination. VOG acted in bad faith on administration pursuant

to Procurement Laws and VOG Procurement rules and regulation. Yes, OPA have all the authority to grant the relief I am requesting. In case the bidder acted in bad faith then relief can still be granted due to Buy American Act law which is a Federal law that supersedes Guam law.


Conclusion

I am respectfully requesting that OPA denies all the issues of the Motion to Dismiss filed by the Defendant. I will say that my complaint had improved VOG procurement because now Emily is responsive, answering the phone and the VOG President of the Procurement have waived the \$25.00 fee in their next bid. That's an improvement but there are more

rooms to improve. That is why it is essential that the OPA grant all the relief I am requesting and deny the Motion to Dismiss filed by the Defense.

Date: 12/14/21

Respectfully Submitted


Sedfrey M Linsangan
GPE INC PRESIDENT