



Jerrick Hernandez <jhernandez@guamopa.com>

In Appeal of JJ Global Services - Appeal Case No. OPA-PA-21-013

Anissa Senior <as@cmlaw.us>

Mon, Dec 6, 2021 at 4:13 PM

To: "jhernandez@guamopa.com" <jhernandez@guamopa.com>

Cc: Vanessa Williams <vlw@vlwilliamsllaw.com>, Service LOVW <service@vlwilliamsllaw.com>, Rebecca Wrightson <rw@cmlaw.us>

Dear Mr. Hernandez:

Pursuant to the Letter dated October 28, 2021 Re: Notice of Receipt of Appeal – OPA-PA-21-013, please find attached the following document(s) for filing in the above-referenced matter:

1. **Purchasing Agency's Reply in Support of Motion to Dismiss for Lack of Jurisdiction**
2. **Declaration of Joleen M. Evangelista**
3. **Purchasing Agency's Rebuttal to Comments on Statement Answering Allegations of Appeal**

Sincerely,

Anissa-Valene Senior

Legal Secretary

Cabot Mantanona LLP

929 South Marine Corp Drive, Suite 200

[Tamuning Guam 96913](#)

Tel (671)-646-2001

Fax (671)-646-0777

Email: as@cmlaw.us

CONFIDENTIALITY NOTICE: THE FOREGOING MESSAGE, INCLUDING ANY ATTACHMENTS, IS COVERED BY THE ELECTRONIC COMMUNICATIONS PRIVACY ACT, 18 U.S.C. SECTIONS 2510-2521 AND IS SENT BY A LAW FIRM AND IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM OR WHICH IT IS ADDRESSED AND CONTAINS INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE. ANY SUCH AND ALL SUCH RIGHTS OF PRIVILEGE, CONFIDENTIALITY, AND NON-DISCLOSURE ARE HEREBY CLAIMED AND EXPRESSLY NOT WAIVED. DO NOT READ THE MESSAGE AND ATTACHMENT(S) IF YOU ARE NOT THE INTENDED RECIPIENT. IN ANY EVENT, THE INFORMATION CONTAINED IN THIS E-MAIL TRANSMISSION AND ANY ATTACHMENT IS CONFIDENTIAL AND REMAINS THE PROPERTY OF THE SENDER UNTIL IT IS RECEIVED BY THE INTENDED RECIPIENT. IF YOU ARE NOT THE INTENDED RECIPIENT, OR AN EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR PLEASE NOTIFY THE SENDER IMMEDIATELY AND DELETE THE MESSAGE AND ANY ATTACHMENTS WITHOUT RETAINING ANY COPIES. THANK YOU.

3 attachments

 **2021.12-06 - GCC's Reply re Motion to Dismiss for Lack of Jurisdiction OPA-PA-21-013.pdf**
270K

 **2021.12-06 - Decl. J.Evangelista Ex. A re GCC's Reply Rebuttal OPA-PA-21-013.pdf**
219K

 **2021.12-06 - GCC's Rebuttal to JJ Global's Comments OPA-PA-21-013.pdf**
272K

BACKGROUND SUMMARY²

On May 13, 2021, GCC issued Bid Invitation No. GCC-FB-21-009 (“IFB”) for a design-build concept for replacing Building 900’s metal awning structure (the “Project”) that required a completion time of ninety days inclusive of the “building permit process and material lead time,” and pricing for two options for the material: Option 1 being black iron and Option 2 being galvanized iron. (*See* Agency Report [“AR”], Tab 10 at 001-02, 030-31; Procurement Record [“PR”], Tab 3 at 014, 056-60.) At the Bid Opening on the morning of June 3, two bidders submitted bid packets for the solicitation: JJ Global, and Clayarch, Inc. (*See* AR, Tab 8; PR, Tab 7 at 089.) That evening about 6:00 p.m., JJ Global sent a letter to GCC attempting to “correct an error” in the pricing offered in its bid packet.³ (*See* AR, Tab 7 at 024-25; PR, Tab 9 at 268-70.) The next day, GCC advised JJ Global that its bid prices could not be changed (*see AR id.* at 022-23; *PR id.* at 266), in accordance with the law, *see* 5 GCA § 5211(f); 2 GAR 4 § 3109(m).

After evaluation of the bid packets, on July 2, 2021, GCC sent a Notice of Intent to Award to JJ Global that contained a list of items required prior to awarding the contract for Option 2 galvanized iron in the amount of \$163,263.84. (*See* AR, Tab 5 at 061; PR, Tab 10 at 276-78.) JJ Global provided these items via email on July 16 and hand-delivery on July 19. (*See AR id.* at 049-55; PR, Tab 11 at 355-87.)

² Because GCC’s Motion provides a detailed background, only a summary is provided herein.

³ JJ Global’s bid packet offered a total price of \$179,590.24 for Option 1 black iron, and a total price of \$163,263.84 for Option 2 galvanized iron. (*See* AR, Tab 9 at 016-17; PR, Tab 8 at 141-42.) JJ Global’s letter indicated that it wanted for these prices to be the other way around with the galvanized iron price being the higher price. (*See* AR, Tab 7 at 025; PR, Tab 9 at 269.)

On July 27, 2021, GCC emailed to JJ Global a bid award letter advising that the date for both the contract award and notice to proceed is July 27, 2021 and attached the formal contract for JJ Global's signature — it was already signed by GCC. (*See* AR, Tab 5 at 043-48 & Tab 6; PR, Tab 11 at 345-47 & 315-22.) On July 28, GCC emailed to JJ Global the purchase order for the Project. (*See id.*)

Although JJ Global received the award letter, formal contract and purchase order (*see* AR, Tab 5 at 043-47; PR, Tab 11 at 330-31 & 344-45), JJ Global did not sign and return the formal contract. Instead, for the next several weeks, JJ Global questioned items and requirements clearly set forth in the IFB (*see AR id.* at 040-42; *PR id.* at 341-45), requested extensions of the Project's completion date (*see AR id.* at 035-39; *PR id.* at 338-40) and requested to add language to the formal contract regarding an extension of the Project's completion date (*see AR id.* at 024-28; *PR id.* at 309-13). After enduring over eight weeks of JJ Global's delays and evasion (*see* Mot. at 3-5), on September 22, 2021, GCC cancelled the purchase order since JJ Global still had not signed and returned the formal contract. (*See* AR, Tab 5 at 011; PR, Tab 11 at 290.)

On October 5, 2021, JJ Global submitted a "Protest Letter" to GCC claiming:

... JJ Global's signature of [sic] the proposed contract referenced in your email is not grounds to cancel or terminate the award. Paragraph 29 of the Instructions of the GCC-FB-21-009 states in pertinent part:

... Award issued to the lowest responsible bidder with the specified time for acceptance as indicated in the solicitation, result in a binding contract without further action by either party. ...

Therefore, pursuant to the terms of the IFB, the July 27, 2021 award to JJ Global resulted in a binding contract without further action by either GCC or JJ Global. Moreover, GCC may not terminate the contract entered with JJ Global in violation of the terms of the IFB.

(AR, Tab 4 at 008; PR, Tab 13 at 413 (emphasis omitted).) On October 12, GCC denied the Protest because (1) the Protest is not a valid protest as it argues a contract dispute; contract controversies are resolved by a different procedure, *see* 5 GCA § 5425(a); 2 GAR 4 § 9101(c); and (2) even if valid, the Protest is untimely because the grounds were known to JJ Global far more than 14 days prior as GCC first provided the formal contract to JJ Global for signature and return on July 27 and finally required return of the signed contract by August 31 — respectively, 70 and 35 days before JJ Global submitted its Protest on October 5. (*See* AR, Tab 3 at 002-3; PR, Tab 13 at 403.) On October 27, JJ Global filed its Notice of Appeal with the Public Auditor. (*See* Appeal.)

On November 9, 2021, GCC filed its Motion to Dismiss for Lack of Jurisdiction since the instant Appeal is not properly before the Public Auditor because (1) JJ Global's Protest complained it had a contract that could not be terminated, which is not valid subject matter for a protest as contract controversies are resolved through a different procedure that has not been exhausted, and (2) even if valid subject matter, JJ Global's Protest was untimely as JJ Global was aware of the grounds far more than fourteen days before submitting its Protest. (*See generally* Mot.) JJ Global filed its Opposition on November 29, 2021.

For the reasons explained below and in GCC's Motion, the instant Appeal is not properly before the Public Auditor and therefore must be dismissed for lack of jurisdiction.

ARGUMENT

GCC's Motion explained, with ample record and legal citations, why the Public Auditor lacks jurisdiction over the Appeal. (*See* Mot. at 7-11.) In its Opposition, JJ Global attempts to resuscitate its Appeal with a misguided view of both the record and the law. (*See generally* Opp'n.) JJ Global's Opposition provides no reason for its Appeal to proceed.

A. JJ Global Does Not Dispute that Its Protest Argued a Contract Controversy, Which Is Resolved Through a Procedure that Was Never Commenced, Let Alone Exhausted; the Public Auditor Lacks Jurisdiction

In its Motion, GCC explained how JJ Global’s “Protest Letter” argued a contract dispute but JJ Global did not exhaust the required procedure for resolving contract controversies and how, as a result, the Public Auditor lacks jurisdiction over the instant Appeal. (*See* Mot. at 8-9.) Noticeably absent from JJ Global’s Opposition is any assertion that its Protest did *not* argue a contract dispute. (*See generally* Opp’n.) Rather, JJ Global insists that its Protest was proper. (*See id.* at 3-4.) The law undercuts JJ Global’s position.

The plain language of 5 GCA § 5427 provides: “This Section applies to controversies between the Territory and a contractor and which arise under or by virtue of, a contract between them.” 5 GCA § 5427(a). The record plainly shows JJ Global’s Protest argues that “pursuant to the terms of the IFB, the July 27, 2021 award to JJ Global resulted in a binding contract without further action by either GCC or JJ Global. Moreover, GCC may not terminate the contract entered with JJ Global in violation of the terms of the IFB.” (*See* AR, Tab 4 at 008; PR, Tab 13 at 413.) Thus, the record and the law clearly establish that JJ Global’s Protest argues a controversy between it and GCC “aris[ing] under or by virtue of, a contract between them” that must be resolved pursuant to 5 GCA § 5427 and its accompanying regulation 2 GAR 4 § 9103. And the record clearly reveals that JJ Global did not even commence, let alone exhaust, the procedure for resolving contract controversies. Therefore, the Public Auditor lacks jurisdiction because this Appeal is not properly before him. *See, e.g., Mega United Corp. v. Guam Econ. Develop. Auth.*, OPA-PA-17-007, Dec. re Mot. to Dismiss (Aug. 1, 2017) (concluding lack of jurisdiction over appeal because appellant failed to meet time

periods within procedure for contract controversy resolution)⁴; *see also, e.g.*, 2 GAR 4 § 12103 (section titled: “Jurisdiction of the Public Auditor; *Exhaustion of Remedies*” (emphasis added)).

Given the absence of any assertion to the contrary in its Opposition (*see generally* Opp’n), JJ Global apparently agrees that its Protest argued a contract controversy. However, rather than acknowledge the required legal procedure for resolving contract controversies, JJ Global proffers flawed interpretations of the laws governing protests to insist that its Protest was proper. (*See id.* at 3-4.) None of JJ Global’s proffers have merit.

At the outset, JJ Global disregards that 5 GCA § 5425(a) provides for a protest when a “bidder, offeror or contractor [] may be aggrieved in connection with . . . *the award* of a contract.” Thus, a protest is the means to challenge *the propriety of the award*, not argue a controversy *between the parties to a contract that was already awarded*. Here, JJ Global’s Protest does not challenge the propriety of the award to JJ Global. Rather, the Protest argues that GCC improperly terminated the contract that was already awarded to JJ Global. A challenge to the termination of an awarded contract is a matter of contract administration, which is not valid subject matter for a protest. *Accord Lyon Shipyard, Inc.*, B-417734.2, 2019 CPD ¶ 365, 2019 WL 5390186 (Comp. Gen. Oct. 22, 2019) (dismissing protest that challenged the agency’s termination of contract because such a challenge presents a matter of contract administration, which is not a bid protest); *Edith C. Lawrence*, B-239148, 90-2 CPD ¶ 83, 1990 WL 278273 (Comp. Gen. July 30, 1990) (same); *JTL, Inc.*, B-240411, 90-2 CPD

⁴ JJ Global misreads the Motion’s citation to *Mega United*. (*See* Opp’n at 4.) The Motion cited “*e.g., Mega United*” as an example of the lack of jurisdiction due to failure to properly exhaust the procedure for resolving contract controversies. (*See* Mot. at 8-9.)

¶ 66, 1990 WL 278278 (Comp. Gen. July 23, 1990) (same); *Adroit Mfg., Inc.*, B-217322, 84-2 CPD ¶ 693, 1984 WL 47120 (Comp. Gen. Dec. 24, 1984) (same); *Foto Typesetters, Inc.*, B-210349, 83-1 CPD ¶ 53, 1983 WL 26357 (Comp. Gen. Jan. 17, 1983) (same).

JJ Global seems to believe that simply because the word “contractor” appears in § 5425(a), then its Protest was proper. (See Opp’n at 3-4.) JJ Global is mistaken. There are various scenarios where a contractor — *i.e.*, a “person having a contract with a governmental body” — could file a legitimate protest. As a few examples, a contractor could become aggrieved by an agency’s use of an emergency procurement or sole source procurement. *See, e.g., Basil Food Ind. Serv. Corp. v. Gen. Serv. Agency (“GSA”),* OPA-PA-16-006 & OPA-PA-16-008, Dec. (Oct. 27, 2016) (consolidated appeals of contract termination under § 5427 and protest challenging emergency procurement under § 5425). Or a solicitation could allow for multiple awards and a bidder awarded one contract — *i.e.*, a contractor — could challenge the award to another bidder. *See, e.g., Flame Tree Freedom Ctr. v. GHURA,* OPA-PA-19-006, Dec. & Order re Mot. to Dismiss for Lack of Juris. (Aug. 6, 2019).

Furthermore, JJ Global’s seeming effort to confer jurisdiction over its Appeal because it “should not be punished” for language in the IFB is untenable. (See Opp’n at 4.) It is well settled that the parties cannot confer jurisdiction, it “must be given by the law.” *Town of Elgin v. Marshall*, 106 U.S. 578, 580 (1883). Also well settled is that jurisdiction either exists or it does not and when it does not, dismissal is the only course of action. *See, e.g., DFS Guam L.P. v. A.B. Won Pat Int’l Airport Auth.*, 2014 Guam 12, ¶ 14 (“[w]ithout jurisdiction the court cannot proceed at all in any cause. . . . when it [jurisdiction] ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause” (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 74

U.S. 506, 514 (1868))) (first alteration in original). Moreover, contrary to its assertion, JJ Global should know that the language in Paragraph 29 of the IFB is not “unique” to GCC (see Opp’n at 4) as this is a standard term appearing in several solicitations issued by GSA that JJ Global participated in this year.⁵ What is more, JJ Global neglects to provides any legal authority supporting its puzzling contention that supposed “vagueness” in a solicitation’s language somehow bestows jurisdiction.⁶ (See Opp’n at 4.)

To put it simply, a procurement occurs in three general phases: (1) solicitation of offers, (2) award of contract and (3) contract administration. A protest under 5 GCA § 5425(a) addresses the solicitation and award phases. After a contract is awarded, the contract administration phase begins and controversies between the agency and contractor regarding the awarded contract must first be resolved pursuant to 5 GCA § 5427 and 2 GAR 4 § 9103 to be properly submitted to the Public Auditor under 5 GCA § 5703(a). JJ Global’s Opposition does not dispute that its Protest argued a contract controversy and proffers no

⁵ See GSA’s website regarding FY2021 invitations for bid at <http://gsa.doa.guam.gov/invitation-for-bid/>. The language in Paragraph 29 of the IFB’s General Terms and Conditions appears at paragraph 22 of general terms and conditions in the following solicitations in which JJ Global participated:

- (1) <http://gsa.doa.guam.gov/wp-gsa-content/uploads/2021/01/GSA-007-21-JANITORIAL-SERVICES-DPHSS-BES.pdf>
- (2) <http://gsa.doa.guam.gov/wp-gsa-content/uploads/2021/02/GSA-015-21-GROUND-MAINTENANCES-FOR-VICENTE-LIMTIACO-TIGUAC-CEMETARY-PITI-GOV.-JOSEPH-F.pdf>
- (3) <http://gsa.doa.guam.gov/wp-gsa-content/uploads/2021/07/GSA-033-21-JANITORIAL-SERVICES-FOR-GUAM-MUSEUM-GUAM-CHAMORU-EDUCATIONAL-FACILITY.pdf>
- (4) <http://gsa.doa.guam.gov/wp-gsa-content/uploads/2021/07/GSA-038-21-JANITORIAL-SERVICES-DRT.pdf>
- (5) <http://gsa.doa.guam.gov/wp-gsa-content/uploads/2021/09/GSA-060-21-JANITORIAL-GROUND-BUILDING-MAINTENANCE-SERVICES-FOR-DOA-HESLER-BLDG-1.pdf>
- (6) <http://gsa.doa.guam.gov/wp-gsa-content/uploads/2021/09/GSA-068-21-GROUND-MAINTENANCE-AND-LANDSCAPING-SERVICES.pdf>

⁶ Further puzzling is JJ Global’s contention that a winning bidder would be unable to protest the award to itself. (See Opp’n at 3-4.) It is unclear why a prevailing bidder would challenge its own award.

legal reason why the Public Auditor has jurisdiction when JJ Global failed to commence, let alone properly exhaust, the procedure for resolving contract controversies. Accordingly, the instant Appeal is not properly before the Public Auditor and must be dismissed.

B. Even If Valid Subject Matter for a Protest, JJ Global Fails to Establish that Its Protest Was Not Untimely; the Public Auditor Lacks Jurisdiction

Assuming arguendo the validity of the subject matter, GCC's Motion explained how JJ Global's Protest was untimely because it knew of the grounds for its claim several weeks longer than the 14-day limitation period mandated by law and therefore jurisdiction is lacking over the instant Appeal. (*See Mot.* at 10-11.) Continuing to insist that it had a contract, JJ Global's Opposition fail to establish that its Protest was not untimely. By incorrectly framing its Protest, JJ Global argues that the grounds until GCC cancelled the purchase order on September 22, 2021. (*See Opp'n* at 4-6.) This same argument has been flatly rejected by both Guam's Supreme Court and the Public Auditor.

In *DFS Guam L.P. v. The A.B. Won Pat Int'l Airport Auth. Guam* ("GIAA"), although basing its protest on a variety of alleged misconduct occurring pre-award, DFS asserted that its protest clock began to run at "notice of the proposed award, not notice of the underlying facts that gave rise to the protest." 2020 Guam 20, ¶ 85. The Court "reject[ed] this argument, which is directly contrary to the statutory text" of 5 GCA § 5425(a),⁷ instructing:

⁷ This statute provides:

Right to Protest. Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto.

5 GCA § 5425(a).

. . . Courts have consistently rejected DFS’s argument that a party becomes “aggrieved” for purposes of a procurement protest “only when it loses the potential business, that is, when a bidder learns that it was not awarded a contract.” *In re Acme Am. Refrigeration, Inc. v. N.Y.C. Dep’t of Educ.*, 933 N.Y.S.2d 509, 513 (Sup. Ct. 2011). . . .

How a protest is framed by the aggrieved bidder — including whether they frame the protest as a challenge to the solicitation, the evaluation, or the award — does not dictate when the time period to file a protest begins to run. *See, e.g., Blue & Gold Fleet, L.P. v. United States*, 492 F.3d 1308, 1313 (Fed. Cir. 2007) (“While [protester] characterizes this as a challenge to the evaluation of [other bidder’s] proposal, we agree with the Court of Federal Claims that this argument is properly characterized as a challenge to the terms of the solicitation.”)

Section 5425(a) speaks not in terms of *what* is being protested but in terms of knowledge of the facts giving rise to a protest. 5 GCA § 5425(a); *see also* 2 GAR Div. 4 § 9101(c)(1). Therefore, 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. . . .

. . . [I]n order to determine the date on which the 14-day window of section 5425(a) begins to run, the court must conduct an analysis examining what facts are necessary to establish a protest claim and when the protester knew, or should have known, facts establishing the essential elements of that protest claim. *See* 5 GCA § 5425(a).

DFS v. GIAA, 2020 Guam 20, ¶¶ 85-88 (citations omitted; emphasis in original). Thus, *DFS v. GIAA* instructs that notice of the facts or grounds that establish the basis of the claim presented in the protest starts the 14-day clock, not notice of a lost business opportunity.

Similarly, in *Pacific Data Sys. (“PDS”) v. Guam Housing and Urban Renewal Auth. (“GHURA”)*, OPA-PA-21-001, PDS based its protest on deficiencies in a competitor’s bid that PDS had notice of for over a month before receiving a Notice of Non-award. The Public Auditor rejected PDS’ argument that the protest clock started running with the Notice of Non-award because the bid deficiencies were the “alleged misconduct form[ing] the basis of the protest,” not the Notice of Non-award. *See PDS v. GHURA*, OPA-PA-21-001, Dec. & Order re Mot. to Dismiss for Lack of Juris. (July 16, 2021).

Here, like in *DFS v. GIAA* and *PDS v. GHURA*, the facts or grounds or alleged misconduct forming the basis of the claim presented in JJ Global's Protest were known to JJ Global for several weeks before it submitted its Protest. The Protest presents a single claim that argues because of language in Paragraph 29 of the IFB's Terms and Conditions, GCC cannot compel JJ Global's signature on the formal contract (*see* AR, Tab 4 at 008; PR, Tab 13 at 413) — and GCC requesting JJ Global to sign the formal contract are the facts or grounds or alleged misconduct forming the basis of that claim. Of course assuming valid subject matter, JJ Global could and should have presented this claim in a protest within 14 days of when GCC first requested JJ Global to sign and return the formal contract at the end of July or, at the very least, within 14 days of when GCC finally demanded return of the signed formal contract at the end of August. (*See* AR, Tab 5 at 043-47 & 020; PR, Tab 11 at 345-47, 314-22 & 305.) JJ Global did not do so. Instead, JJ Global embarked on a weeks-long course of delay and evasion regarding the contract it was awarded and the work required thereunder. (*See* Mot. at 3-5.) Indeed, JJ Global even tried to add terms to the formal contract that it now contends it did not have to sign because of language in Paragraph 29. (*See* AR, Tab 5 at 024-28; PR, Tab 11 at 323-24.)

And like the rejected arguments made in *DFS v. GIAA* and *PDS v. GHURA*, also unavailing is JJ Global's argument that the lost business opportunity caused by cancellation of the purchase order started the 14-day clock (*see* Opp'n at 5-6). Without question, *as early as the end of July*, JJ Global could have presented its protest claim that GCC cannot compel it to sign a formal contract because of language in Paragraph 29. In short, there is no doubt that JJ Global had notice of the facts or grounds or alleged misconduct forming the basis of the claim presented in its Protest for nearly ten weeks before it submitted its Protest.

Furthermore, JJ Global's position that it was not aware GCC wanted a signed formal contract is dubious. (See Opp'n at 5-6.) The same Paragraph 29 appeared in a solicitation issued by GCC last year that resulted in an award to JJ Global and for which JJ Global executed a formal contract. (See Decl. J. Evangelista (contemporaneously filed).) The Notice of Intent to Award that GCC issued to JJ Global on July 2, 2021 states "[p]rior to providing you with the contract," JJ Global would need to submit several items. (See AR, Tab 5 at 061; PR, Tab 10 at 276.) And several times GCC followed up on JJ Global's signature and return of the formal contract (see Mot. at 3-5), finally demanding on August 30 that "the executed contract must be received by our office by 5:00pm, CHST on August 31, 2021" (AR, Tab 5 at 020; PR, Tab 11 at 305). In fact, JJ Global wanted to add language to the formal contract and declared: "Once the contract reflects this understanding, we can execute. Thank you." (See AR *id.* at 028; PR *id.* at 323.) Thus, JJ Global unequivocally knew that GCC wanted a signed formal contract.

Accordingly, as a matter of both law and fact, the claim presented in JJ Global's Protest is grounded on facts or alleged misconduct — i.e., Paragraph 29 allegedly precludes GCC from requesting a signed formal contract — that JJ Global was aware of nearly ten weeks before it submitted its Protest. JJ Global cannot establish otherwise. Therefore, assuming valid subject matter for a protest, JJ Global's Protest was untimely and the Public Auditor lacks jurisdiction over the instant Appeal. See *PDS v. GHURA*, OPA-PA-21-001, Dec. & Order re Mot. to Dismiss for Lack of Juris. (July 16, 2021).; *IT&E v. GPA*, OPA-PA-19-008, Dec. (Sep. 26, 2019); *Flame Tree. v. GHURA*, OPA-PA-19-006, Dec. re Mot. to Dismiss for Lack of Juris. (Aug. 6, 2019).

CONCLUSION

For the foregoing reasons and those presented in its Motion, GCC submits that the Public Auditor must dismiss the instant Appeal for lack of Jurisdiction.

Respectfully submitted December 6, 2021.

CABOT MANTANONA LLP
Attorneys for Purchasing Agency
Guam Community College

By: 
REBECCA J. WRIGHTSON