



Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

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## OPA-PA-22-002 Decision and Order RE Purchasing Agency's Motion to Dismiss Appellant's JWS Claims

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Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

Thu, Apr 14, 2022 at 2:42 PM

To: "Camacho, Anthony" &lt;arcamacho@triton.uog.edu&gt;, Seth Forman &lt;forman@guamlawoffice.com&gt;

Hafa Adai,

Please see attached Decision and Order RE Purchasing Agency's Motion to Dismiss Appellant's JWS Claims for OPA-PA-22-002. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA  
Auditor  
Office of Public Accountability – Guam  
[www.opaguam.org](http://www.opaguam.org)  
Tel. (671) 475-0390 ext. 204  
Fax (671) 472-7951

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**BEFORE THE PUBLIC AUDITOR  
PROCUREMENT APPEALS  
TERRITORY OF GUAM**

**Appeal No: OPA-PA-22-002**

In the Appeal of )

All Business Enterprise Corp., )

Appellant. )

**DECISION AND ORDER RE  
PURCHASING AGENCY'S  
MOTION TO DISMISS APPELLANT'S  
JWS CLAIMS**

To: **Purchasing Agency:**  
University of Guam  
C/O Anthony R. Camacho, Esq.  
Legal Counsel  
UOG Station  
Mangilao, Guam, 96923  
Phone: (671) 735-2925  
Fax: (671) 735-3010  
Email: [arcamacho@triton.uog.edu](mailto:arcamacho@triton.uog.edu)

**Appellant:**  
All Business Enterprise Corp.  
C/O Seth Forman, Esq.  
Roberts Fowler & Visosky LLP  
865 South Marine Corps Drive, Ste. 201  
Tamuning, Guam 96913  
Phone: (671) 646-1222  
Fax: (671) 646-1223  
Email: [Forman@guamlawoffice.com](mailto:Forman@guamlawoffice.com)

**THIS MATTER** came before the Public Auditor on April 14, 2022, for a Motions Hearing on the Purchasing Agency UNIVERISTY OF GUAM's (Hereafter Referred to as "UOG") Motion to Dismiss Appellant's JWS Claims, filed in this matter on March 23, 2022. Appellant ALL BUSINESS ENTERPRISE CORP. (Hereafter Referred to as "ABE Corp.") was represented by its Counsel of Record, SETH FORMAN, Esq., and UOG was represented by its Counsel of Record, ANTHONY R. CAMACHO, Esq.

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**ANALYSIS**

In its Motion to Dismiss Appellant’s JWS Refrigeration and Air Condition Ltd. (Hereafter Referred to as “JWS”) Claims, UOG argues that ABE Corp.’s claims regarding JWS’ bid are not properly before the OPA and the OPA does not have the jurisdiction to decide them. UOG alleged ABE Corp. had no authority to protest JWS’ bid because UOG did not award the contract to JWS. JWS is ranked second after the awarded vendor Tony’s Workshop.

Under *DFS Guam L.P. v. The A.B. Won Pat International Airport Authority*, a party should file a protest “when alleged misconduct forms the basis of a procurement protest, the time runs from the date on which the protesting party first learned of the purported misconduct.” *Id.* ¶ 89. 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. In line with this, the Public Auditor finds ABE Corp’s appeal regarding JWS’ bid is properly before him because the Appellant ABE Corp. filed its protest within fourteen days after it became aware that JWS’s bid had deficiencies.

**CONCLUSION**

At the Motion Hearing, the Public Auditor DENIED UOG’s Motion to Dismiss the Appellant’s JWS Claims, and Ordered UOG to inform Interested Parties Tony’s Workshop and JWS of their right to file an appearance in the procurement appeal proceedings by Friday, April 23, 2022. The appeal will move forward with the Formal Hearing scheduled for 9:00am, Wednesday, April 27, 2022 in the OPA Hearing Room, Suite 907 of the DNA Bldg. in Hagåtña, Guam.

**SO ORDERED** this 14<sup>th</sup> day of April 2022 by:



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