

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



TRANSMITTAL

To:	Mr. John M. Benavente, P.E. General Manager Guam Power Authority P.O. Box 2977 Hagåtña, Guam 96932 Fax: (671) 648-3165 Email: jbenavente@gpagwa.com	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	7 (including cover page)
CC:	Ms. Shannon Taitano, Esq. Attorney for Appellant Dooik Eng Co., Ltd. Camacho & Taitano LLP 204 Hesler Place, suite 203B Hagåtña, Guam 96910 Phone: (671) 989-2023 Email: service@camachotaitano.law	Date:	September 19, 2023
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-23-004 Notice of Receipt of Appeal

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



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 19, 2023

John M. Benavente, P.E.
General Manager
Guam Power Authority
P.O. Box 2977
Hagåtña, Guam 96932

VIA FACSIMILE: (671) 648-3165

Re: Notice of Receipt of Appeal – OPA-PA-23-004

Dear Mr. Benavente,

Please be advised that Dooik Eng Co., Ltd. (hereinafter referred to as “Dooik”) filed an appeal with the Office of Public Accountability (OPA) on September 18, 2023, regarding GPA’s denial of its protest decision related to the procurement for the Performance Management Contract (PMC) Yigo Diesel Generators (Multi-Step Bid GPA-023-23. OPA has assigned this appeal case number OPA-PA-23-004.

Immediate action is required of GPA 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 four 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 appeal. 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 **Tuesday, September 26, 2023**, 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 **Tuesday, October 3, 2023**, ten work days following receipt of this notice.

When filing all required documents with our office, please provide one original and one copy to OPA (**electronic filings will be acceptable and highly encouraged**), and serve a copy to Dooik.

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 Four Pages of the Notice of Appeal – OPA-PA-23-004

Cc: Shannon Taitano, Esq., Attorney for Dooik

1 SHANNON TAITANO, Esq.
2 CAMACHO & TAITANO LLP
204 Hesler Place, Suite 203B
3 Hagåtña, Guam 96910
Telephone: (671) 989-2023

4 Attorneys for Appellant *Dooik Eng Co., Ltd.*

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 09/18/2023

TIME: 9:27 AM LPM BY: TMB

FILE NO OPA-PA: 23-004

6 THE OFFICE OF PUBLIC ACCOUNTABILITY

7 IN THE MATTER OF THE APPEAL OF)
8)
9)

Docket No. OPA-PA- 23-004

10 DOOIK ENG CO., LTD.,)
11)
12)

NOTICE OF APPEAL

Appellant.)
13)
14)

14 I. APPELLANT INFORMATION

15 Name: Dooik Eng Co., Ltd.

16 Mailing Address: 816 North Marine Drive, Suite 106-107
17 Tamuning, Guam 96913

18 Business Address: 3rd Floor, Se Hwa Enterprise, 31, Haeyang-ro
19 Yeongdo-gu, Busan, Korea

20 Email address: dooikeng@shippare.net

21 Contact No. 82-51-466-9492 or 82-51-467-8587

22 Appellant is represented by legal counsel in this appeal. For purposes of this
23 appeal, please direct correspondence to Dooik Eng Co., Ltd's counsel:

24 Camacho & Taitano LLP
204 Hesler Place, Suite 203B
25 Hagatna, Guam 96910

26 Email: service@camachotaitano.law

Telephone: 671-989-2023

1 **II. APPEAL INFORMATION**

- 2 A. Purchasing Agency: Guam Power Authority
3 B. Solicitation Number: GPA-023-23
4 C. The Decision being appealed was provided to the Appellant September 6,
5 2023. The Decision was made by the Head of the Purchasing Agency, Mr.
6 John M. Benavente, P.E.
7 D. Appeal is made from the Decision on Protest of Method, Solicitation or
8 Award.
9 E. Contract has not been awarded.
10 F. The name of the only competing offeror known to the Appellant is:
11 JBC/ORBIS/GAI

12 **III. STATEMENT OF GROUNDS FOR APPEAL AND RULING REQUESTED**

13 **A. THE GROUNDS FOR APPEAL**

14 **1. Relevant Procedural and Factual History**

15 In 2020, the Guam Power Authority "GPA" issued GPA-061-20, a multi-step
16 bid for a performance management contract for Yigo generators. Appellant was deemed
17 qualified to participate in phase 2 of the multi-step bid. Phase 2 was the opening of the
18 qualified bidder's price proposal. After disqualifying the lower bidder, the appellant was
19 notified it was the lowest-priced qualified bidder. The evaluation committee
20 recommended the contract be awarded to Appellant. However, the procurement was
21 canceled. Appellant protested GPA's decision to cancel. GPA denied the protest.
22 Appellant did not appeal the decision.

23 In January 2023, GPA issued GPA 023-23, a multi-step performance
24 management contract for the Yigo diesel generators. Appellant has again submitted a
25 bid. This time GPA notified Appellant that GPA had determined Appellant's bid to be
26 non-responsive. Appellant protested, questioning the determination since it qualified
for the same multi-step bid in 2020. GPA denied the protest, alleging that the IFB
scopes were different in that GPA would rely on the contractor to perform almost all of
the operational and maintenance functions to run the plant and could not commit to
supply personnel to assist with the plant maintenance as opposed to the 2020 invitation
for bid. The appellant submits its appeal of that decision.

2. Statement of Grounds for Appeal

- A. Appellant is qualified to perform the services. Appellant qualified in
2020 under a previous procurement for the same services. The
appellant was selected, and GPA recommended that the appellant be
awarded the contract. The procurements are almost identical except
for the availability of GPA personnel to assist in the plant

1 maintenance. This minor change is not sufficient to disqualify the
2 Appellant.

3 B. GPA's argument that with this procurement, it cannot supply
4 personnel to assist the PMC should not affect the Appellant's
5 qualification to perform the services. The need for Appellant to
6 supply more personnel is a cost factor and should not be an evaluation
7 criterion to determine qualification.

8 This was made clear by GPA's response to questions about Section
9 3.8 GPA Staffing, which states that the CONTRACTOR shall manage
10 the GPA employees and ensure that the personnel receive appropriate
11 training, - with above-average competence and abilities.

12 Question 1. We request GPA to ensure that the GPA employees also have the
13 technical knowledge and experiences to handle the works when they start the works.

14 Question 2. Please clarify how many GPA employees will be considered to
15 make staffing in the bid price.

16 Answer. Bidders shall assume that they will need to completely staff the plant,
17 both in operations and maintenance and that no GPA staffing is available when
18 establishing their bid prices. Should GPA employees be assigned to the plant, GPA will
19 ensure the appropriate individual have the experience and skills necessary.

20 C. Appellant is qualified to manage and operate the Yigo generators. The
21 president has spent many years managing and operating several GPA
22 generators for a prior company.

23 B. RULING REQUEST

- 24 1. Appellant requests that GPA reevaluate Appellant's qualifications based
25 on experience and ability to perform the contract.
- 26 2. Section 3.8 GPA Staffing should not be scored as an evaluation criteria to
determine qualification but rather a cost component in the bid price.
3. GPA evaluate bids consistent with the procurement policy of fostering
competition.

4 C. Supporting exhibit, evidence, or documents

1. Performance Management Contract Invitation for Bid, GPA-061-20 (to
be provided within two weeks)
2. Performance Management Contract Invitation for Bid, GPA-023-23
3. October 14, 2020 qualification letter
4. November 19, 2020 recommendation to award contract
5. Excerpts from Amendment III, GPA-023-23

- 6. May 23, 2023 disqualification letter
- 7. May 30, 2023 protest letter
- 8. September 6, 2023 decision

IV. 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.

Respectfully submitted this 18th day of September 2023.

CAMACHO & TAITANO LLP
Attorneys for Appellant

By: 
SHANNON TAITANO



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-23-004 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>
To: John M Benavente <jbenavente@gpagwa.com>
Cc: "Theresa G. Rojas" <tgrojas@guamwaterworks.org>, service@camachotaitano.law

Tue, Sep 19, 2023 at 9:05 AM

Hafa Adai,

Please see the attached Notice of Receipt of Appeal for OPA-PA-23-004. 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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Best Regards,



Jerrick J.J.G. Hernandez, MA, CGFM, CFE, CICA, CGAP
Accountability Auditor

Office of Public Accountability
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 **23-004 Notice of Receipt of Appeal.pdf**
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