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OPA-PA-23-004, In the Matter of the Appeal of Dooik Eng, Co., Ltd.

Camarine Hopkins <camarine@camachotaitano.law>

Fri, Nov 17, 2023 at 4:14 PM

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Hafa Adai Jerrick,

Camacho & Taitano LLP through Shannon Taitano, Esq., hereby submits this email filing regarding the above subject procurement appeal. This email consists of two (2) documents, as follows:

- Opposition to Motion for Confirmation of Substantial Interest (**4 pages**)
- Opposition to Motion to Dismiss (**6 pages**)

Please let me know if you have any questions. Enjoy the rest of your day.

Thank you,
Camarine

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2 attachments

Opposition (Substantial Interest).pdf
127K

Opposition (Motion to Dismiss).pdf
130K

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7 **THE OFFICE OF PUBLIC ACCOUNTABILITY**

8 **IN THE MATTER OF THE APPEAL OF**

) Docket No. OPA-PA-23-004

9)
10)
11 **DOOIK ENG CO., LTD.,**

) **OPPOSITION TO MOTION TO**
) **DISMISS**

12) Appellant.
13)
14)

15 **I. INTRODUCTION**

16 Dooik Eng., Ltd. (Dooik), appellant, hereby opposes Guam Power Authority's
17 (GPA) motion to dismiss this procurement appeal.

18 **II. BACKGROUND**

19 This appeal stems from GPA's denial of Dooik's protest of ineligibility in the
20 Multit-Step Invitation for Bid No. (IFB) GPA-023-23 for a Performance Management
21 Contract (PMC) for the Yigo Diesel Generators. Dooik protested GPA's determination
22 of ineligibility because it qualified in a 2020 procurement for the same services. GPA
23 denied the protest, claiming the scope of services was significantly different in that the
24

1 contractor would now be responsible for staffing the generators. Dooik appealed the
2 decision.

3 As a result of the appeal, the procurement record became publicly available to
4 Dooik on September 26, 2023. Furthermore, GPA filed the Agency Report disclosing
5 bidders' scoresheets on October 3, 2023.
6

7 **III. STANDARD OF REVIEW**

8 The Public Auditor has the power to review and determine *de novo* any matter
9 properly submitted to him and to "promote the integrity of the procurement process"
10 and the purposes established by the Guam Procurement Law. 5 GCA § 5703(a), (f); *see*
11 *also* 2 GAR Div 4 12103(a).

12 **IV. ARGUMENT**

13 **A. The Public Auditor has jurisdiction over this matter.**

14 Dooik appealed GPA's denial of its protest pursuant to 5 GCA 5425(e) within
15 fifteen (15) days of receipt by protestor of the decision. The Public Auditor has
16 jurisdiction over any matter properly submitted to him. 5 GCA § 5703(a). Even
17 accepting GPA's argument to significantly limit the Public Auditor's ability to promote
18 the integrity of the procurement process, Dooik has consistently raised several claims
19 in its protest and appeal. GPA's argument that the Public Auditor lacks subject matter
20 jurisdiction is meritless.
21
22

23 **B. The Public Auditor has authority to review all of Dooik's claims made in**
24 **connection with and arising out of the procurement.**

1 GPA has asked the Public Auditor to ignore claims that it (1) failed to comply
2 with the Procurement Law by not including “potentially acceptable” as a scoring
3 category; (2) instructed one evaluator to leave blanks on their scoring sheet; (3) failed
4 to justify its use of a Multi-Step IFB instead of an RFP; and (4) failed to comply with 5
5 GCA § 5150¹. GPA’s argument is that the Public Auditor’s review is only limited to
6 matters raised in the protest. The Public Auditor should reject GPA’s attempt to
7 hamstring the Public Auditor’s review for several reasons.
8

9 First, GPA’s arguments are inconsistent with the Procurement Law’s express
10 grant of jurisdiction. The Public Auditor expressly has the power to review and
11 determine de novo *any matter* properly submitted to her or him. 5 GCA § 5703(a). The
12 Procurement Regulations also provide that the Public Auditor can determine whether
13 the procurement complies with Guam’s Procurement Law and Regulations. *See* 2 GAR
14 Div 4 12103(a). Moreover, the Procurement Law states that the Public Auditor’s
15 jurisdiction shall be used to promote the integrity of the procurement process. Limiting
16 the Public Auditor’s review to issues raised in a protest, often by *pro se* litigants at that
17 stage, would not promote the integrity of the procurement process.
18

19 Furthermore, GPA’s arguments are contrary to the intent of the Procurement
20 Law. The Procurement Law is intended to provide for increased public confidence and
21 ensure the fair and equitable treatment of all persons who deal with the procurement
22 system. 5 GCA § 5101(b)(3), (4). GPA has argued that if a protestor discovers
23

24 ¹ Confirmation of compliance with 5 GCA § 5150 was attempted before including this fatal violation in the Comment to the Agency
25 Report and Procurement Record and is still unknown as of the time of this filing.
26

1 additional violations of the procurement law in connection with a procurement after a
2 review of the procurement record and other materials that were not previously
3 available, the Public Auditor has no authority to hear those claims. Again, such an
4 interpretation would not boost the public's confidence or allow for the fair and
5 equitable treatment of prospective bidders.

6
7 Here, Dooik first became aware of additional procurement violations when GPA
8 filed the procurement record and agency report with the Office of Public
9 Accountability (OPA). Dooik raised those violations as a comment on the agency
10 report and procurement record, as it is permitted to do. *See* 2 GAR Div. 4 §
11 12104(c)(4). The claims are not minor informalities that can be waived. These claims
12 can impact whether more bidders can compete as the lowest bidder to this procurement
13 and should not be summarily dismissed.

14
15 C. The remaining arguments raised by GPA are not jurisdictional.

16 GPA has not offered any authority to support its position that the Public Auditor
17 lacks jurisdiction to decide the claims raised by Dooik. The Public Auditor can decide
18 whether to allow these claims that became known after reviewing the procurement
19 record and agency report to be heard at the merit hearing and are not a jurisdictional
20 bar.

- 21
22 1. Dooik is not asking to be awarded the contract but the opportunity to
23 compete in Phase 2 of the Multi-Step IFB process.

24 Remedies for Procurement Law violations will be determined by the Public
25 Auditor and should not be a reason to dismiss the appeal. GPA arbitrarily denied Dooik
26

1 the opportunity to compete in Phase 2, considering Dooik was eligible for the same
2 procurement in 2020, and was recommended the award of the contract, but instead,
3 GPA canceled the procurement. Dooik disagrees with GPA's position that the scope of
4 work requiring the contractor to supply staffing is significant to deem it ineligible to
5 compete in Phase 2, especially since Dooik scored well in that category.
6

7 2. Scoresheets

8 GPA argues that Dooik waived its assertion of failing to follow IFB instructions
9 because Dooik did not ask for its scoresheet sooner. Dooik should not be prejudiced by
10 this argument when the dispute is whether the scope of work was of such significance
11 to deem it ineligible. The failure to comply with the IFB would have impacted Dooik's
12 final score more than likely in its favor.
13

14 3. Scoring Categories

15 GPA failed to follow procurement regulations by not including potentially
16 acceptable as a category of evaluated technical proposals in the Multi-Step IFB. See 2
17 GAR § 3109(t)(4). The procurement record did not provide a written determination
18 justifying the deviation from this regulatory requirement. Therefore, Dooik
19 appropriately noted it in its Comments to the Agency Report and Procurement Record.
20 This omission could have permitted Dooik and possibly other bidders to compete in
21 Phase 2 of the Multi-Step IFB process.
22

23 4. Method of Solicitation

24 Dooik's claim that a request for proposal is the appropriate method of
25 solicitation is not untimely. Guam's Procurement Regulations require a determination
26

1 before using competitive selection procedures. 2 GAR Div. 4 § 3114(c). The
2 procurement record did not include a written determination of the appropriate method
3 of solicitation for the type of services being procured. See 5 GCA § 5216 and 2 GAR
4 Div. 4 § 3114(c). Therefore, Dooik appropriately noted this omission in its Comment
5 to the Agency Report and Procurement Record.
6

7 D. Remedies

8 Dooik agrees with GPA that Guam’s procurement law endeavors “to provide
9 safeguards for the maintenance of a procurement system of quality and integrity.” 5
10 GCA 5001(b)(7). This is consistent with the relief requested by Dooik. Dooik seeks to
11 ensure compliance with Guam’s procurement law which provides remedies preaward to
12 correct violations or cancel. 5 GCA § 5451. Dooik submits that GPA’s errors warrant a
13 reevaluation of its technical proposal.
14

15 CONCLUSION

16 For these reasons, Dooik submits its opposition to the motion to dismiss and
17 asks the Public Auditor to deny the motion.

18 Dated: November 17, 2023.

19 **CAMACHO & TAITANO LLP**
20 Attorneys for Appellant

21 By: 
22 **SHANNON TAITANO**
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