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TRANSMITTAL

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Re: OPA-PA-24-005 Decision

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 Jerrick Hernandez, Auditor
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**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

In the Appeal of) **Appeal No: OPA-PA-24-005**
)
Pacific Federal Management, Inc.,) **DECISION**
)
Appellant.)
_____)

I. INTRODUCTION

This is the Decision of the Public Auditor, pursuant to 2 G.A.R. § 12110, for Appeal No. OPA-PA-24-005. Pacific Federal Management, Inc. (“PFM”) filed its appeal on October 29, 2024, for review of the Guam International Airport Authority’s (“GIAA”) actions related to Invitation for Bid No. GIAA-C07-FY24, Project No. GIAA-FY22-02-1, AIP No. 3, Terminal Building Roof Replacement and Renewable Energy System – Phase I (the “IFB”). The Appeal was heard on January 29, 2025, before Public Auditor Benjamin J. F. Cruz. R. Marsil Johnson, Esq. appeared on behalf of Appellant PFM, William B. Brennan, Esq. appeared for Respondent DOA, and Leevin Camacho, Esq. and Shannon Taitano, Esq. appeared on behalf of Interested Party Green Community Development dba Surface Solutions. Findings of Fact and Conclusions of Law were filed by PFM and GIAA on February 21, 2025.

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II. JURISDICTION: STANDARD REVIEW

The decision of the Public Auditor under appeal is authorized by 5 G.C.A. § 5703. The determination of an issue, the findings of fact, and the decision of the Public Auditor are as stated in 5 G.C.A. § 5704.

III. FINDINGS OF FACT

The Public Auditor shall have the power to review and determine *de novo* any matter properly submitted. 5 G.C.A. § 5703 (a), and in reaching this Decision, has considered and incorporates herein the procurement record and all documents submitted by the parties, and has considered the testimony and arguments made during the hearing held on January 25, 2025. Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

1. GIAA issued the IFB on May 22, 2024.
2. The IFB required bidders to include in their bid inter alia copies of valid Guam Contractor’s License Board (GCLB) license(s) – Classification A, B, C-8, C-13, C-33, C-37, C-41, C-42, C-48, C-51, C-55 and C-56.” Procurement Record (“PR”) at p. 0040.
3. GIAA determined the scope of work, including the contractor’s license requirements with the assistance of a third-party designer, Mr. Roger Nochefranca, P.E., of Evangelista-Acabado Engineers, Inc. dba E&A Engineers.
4. The Bid Form in the IFB indicated that the contractor’s license(s) would have to be submitted with the sealed bid in response to the IFB. IFB pp. PR at p. 0046.
5. The Bidder’s Qualification Statement similarly indicated that bidders would have to submit their contractor’s license(s) with their sealed bid. PR at p. 0077.

- 1 6. The form contract included with the IFB also indicated at Section 10.6 that the contractor
2 warranted it was “duly licensed and authorized to transact the business of construction under
3 the applicable laws of Guam.” PR at pp. 0101-0102.
- 4
- 5 7. PFM acknowledged receipt of the IFB packet on May 30, 2024. PR at p. 0938.
- 6 8. PFM submitted its bid on July 5, 2024. PR at p. 1682 et seq. In its Bid, PFM check marked
7 box 28 of the required forms, Mr. Robert Salas II executed the required forms checklist and
8 submitted the same as part of PFM’s Bid. PR. at p. 1686.
- 9 9. PFM provided the names of two subcontractors in a designation of contractor’s form. PR at
10 p. 72.
- 11 10. PFM executed and submitted the Bidder’s Qualification Statement and submitted its and its
12 subcontractors’ contractor’s licenses. PR. at pp. 1729, 1765-1766, 1834-1838.
- 13 11. PFM is a licensed General Engineering Contractor, an “A License” holder and PFM also
14 holds a General Building Contractor license (also known as a “B License”). PR at pp. 1765–
15 1766.
- 16 12. PFM noted in its bid, “PFM hereby submits the following Guam Contractor’s Licenses. **Our**
17 **team will obtain remaining licenses upon contract award.**” PR at 1833 (emphasis added).
- 18 13. GIAA received two other bids from Core Tech International Corporation (“Core Tech”) and
19 Green Community Development dba Surface Solutions (“Surface Solutions”) in response to
20 the IFB.
- 21 14. GIAA determined that only Core Tech submitted proof with its bid that it or its
22 subcontractors possessed the GCLB licenses required to be submitted with its sealed bid.
- 23 15. Like PFM, Surface Solutions also submitted proof of only some, but not all contractor’s
24 licenses.
- 25 16. Surface Solutions possesses A, B and certain C licenses from the GCLB.
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1 17. GIAA subsequently contacted the GCLB to confirm that neither PFM nor its subcontractors,
2 and Surface Solutions nor its subcontractors, possessed all the GCLB licenses required by
3 the IFB. PR at p. 2097.

4
5 18. After reviewing the licensure of the bidders with the GCLB, GIAA prepared for the award
6 related to this procurement with the assistance and approval of the Office of the Attorney
7 General (“OAG”) pursuant to 5 G.C.A. § 5150.

8 19. GIAA issued a notice of award to Core Tech and gave notice of the same to Surface Solutions
9 and PFM on or about August 19, 2024. PR at p. 1858. PFM learned that GIAA determined
10 that PFM “was found to be nonresponsive and not responsible as Bidder failed to submit and
11 does not hold all required Contractor’s License classifications required in the IFB Package,
12 Special Reminders to Prospective Bidders (Bidder failed to submit and does not hold C-8,
13 C-41, C-42, C-48)”. PR at p. 1856.

14
15 20. Because the procurement record was in the process of being, but was not yet certified and
16 due to procedural requirements of the OAG that further delayed certification, GIAA stayed
17 the procurement upon receipt of PFM’s August 29, 2024 letter of protest. PR at pp. 1856-
18 1857.

19
20 21. GIAA denied PFM’s protest in full on October 14, 2024 after an intervening attempt at
21 informal resolution.

22 22. PFM filed the notice of appeal in this matter on October 29, 2024.

23 **IV. ANALYSIS**

24 **A. PFM’S PROTEST REGARDING GIAA’S REQUIREMENT OF SPECIFIC GCLB** 25 **LICENSES AT BID SUBMISSION WAS UNTIMELY**

26 PFM’s argument in its appeal is that they only learned why GIAA deemed it a nonresponsive
27 bidder on August 19, 2024. Only when PFM received the Bid Status letter informing it that PFM
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1 “failed to submit and does not hold all required Contractor’s license classifications,” did it became
2 aware that GIAA did not agree with its position that the “A License” and “B License” satisfied most
3 of the specialty license requirements of the IFB. Thus, PFM’s protest was timely filed pursuant to 5
4 G.C.A. § 5425(a).

6 Bidders who “may be aggrieved in connection with the method of source selection, solicitation,
7 or award of a contract” may invoke Guam’s procurement protest and appeal statutory scheme. 5 G.C.A.
8 § 5425(a). An aggrieved individual must submit a protest within fourteen (14) days after such aggrieved
9 individual knows or should know the facts giving rise thereto. 5 G.C.A. § 5425(a). A timely protest is a
10 jurisdictional requirement of the procurement protest and appeal scheme. *Teleguam Holdings, LLC v.*
11 *Guam*, 2018 Guam 5 ¶¶ 20-21; *DFS Guam L.P.*, 2020, Guam 20 ¶¶ 77, 81-87 (“a protest filed more than
12 14 days after the disappointed offeror or bidder had notice of the grounds for the protest is barred as
13 untimely.”). *DFS Guam L.P.*, 2020, Guam 20 ¶ 87. The Supreme Court recently affirmed that without a
14 timely protest as to each and every claim, the OPA has no jurisdiction to consider those claims not timely
15 raised. *Pac. Data Sys. v. Guam Dep’t of Educ.*, 2024 Guam 4 ¶ 22 *et seq* (reiterating DFS holding that
16 the statutory timelines in the procurement and appeal scheme are jurisdictional as to each and every
17 claim).

19 Here, PFM’s protest is based on requirements expressly stated in the IFB. As stated above,
20 several places in the IFB made clear that proof of possession of valid contractor’s licenses with
21 classifications: A, B, C-8, C-13, C-33, C-37, C-41, C-42, C-48, C-51, C-55, and C-56 was required to
22 be submitted with a sealed bid in response to the IFB. PR at p. 40

24 PFM received the IFB on May 30, 2024. PFM’s protest raises two separate points: (1) that A
25 and B license holders do not need C-licenses, and (2) that GIAA’s requirement that licenses be submitted
26 with a bid in response to the IFB was improper. PFM was on notice of these bases of protest as of May
27 30, 2024 and therefore had 14 days from that date to protest GIAA’s express requirements. When PFM
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1 submitted its bid on July 5, 2024, PFM knew it did not have all the licenses required of the IFB. 14. PR
2 at 1833 (“PFM hereby submits the following Guam Contractor’s Licenses. Our team will obtain
3 remaining licenses upon contract award”).
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5 PFM’s protest on August 29, 2024, was therefore not made within 14 days of when it knew of
6 the two bases for its protest. PFM’s protest was untimely and the OPA lacks jurisdiction over this appeal.

7 V. CONCLUSION

8 Based on the foregoing, the Public Auditor makes the following determinations:

- 9 A. PFM’s protest of GIAA requirement of specific GCLB licensure at bid submission
10 was UNTIMELY and therefore is DISMISSED WITH PREJUDICE as it is not
11 properly before the Public Auditor.
12
13 B. PFM’s appeal is hereby DENIED.
14
15 C. The parties shall bear their respective costs and attorney’s fees.

16 This is a Final Administrative Decision for Appeal No. OPA-PA-24-005. The Parties are
17 hereby informed of their right to appeal the Public Auditor’s Decision to the Superior Court of Guam
18 in accordance with Part D of Article 9 of 5 G.C.A. §5481(a) within fourteen (14) days after receipt
19 of a Final Administrative Decision. A copy of this Decision shall be provided to the Parties and their
20 respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on
21 the OPA website at www.opaguam.org.

22
23 **DATED this 13th day of March 2025.**

24
25 

26 **BENJAMIN J.F. CRUZ**
27 **Public Auditor of Guam**
28



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-24-005 Decision

Jerrick Hernandez <jhernandez@guamopa.com>

Thu, Mar 13, 2025 at 8:11 AM

To: "R. Marsil Johnson" <rmarsjohnson@bsjmlaw.com>, William Brennan <wbrennan@arriolafirm.com>, Shannon Taitano <shannon@camachotaitano.law>

Cc: Vince Duenas <vduenas@guamopa.com>, GIAA Official <official@guamairport.net>

Hafa Adai,

Please see attached Decision for OPA-PA-24-005. 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

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