



OFFICE OF PUBLIC ACCOUNTABILITY
 Doris Flores Brooks, CPA, CGFM
 Public Auditor
PROCUREMENT APPEALS

IN THE APPEAL OF,
 JUAN C. TENORIO, P.E.
 Appellant

APPEAL NO: OPA-PA-11-006

ORDER DISMISSING APPEAL

THIS MATTER came before the Public Auditor pursuant to an appeal filed on March 9, 2011, by Appellant JUAN C. TENORIO, P.E., (Hereafter "TENORIO") regarding the DEPARTMENT OF PUBLIC WORK's, Government of Guam's (Hereafter "DPW's") failure to issue a decision on TENORIO's February 17, 2011 Protest concerning DPW Project Number: GU-NH-ESTP (001) (Professional Engineering Services for the Feasibility Study and Design of the Tiyan Parkway). After reviewing the TENORIO's Notice of Appeal *Sua Sponte*, the Public Auditor hereby FINDS and ORDERS the following:

1. The Public Auditor finds that she does not have the jurisdiction to hear TENORIO's appeal at this time because DPW has failed to produce a decision on TENORIO's February 17, 2011 protest. The Public Auditor has the power to review and determine *de novo* any matter properly submitted to her. 5 G.C.A. §5703 and 2 G.A.R., Div. 4, Chap. 12, §12103(a). The Public Auditor has the jurisdiction to hear an appeal of a purchasing agency's written decision on a protest concerning the purchasing agency's method of source selection, solicitation, or award of a contract. 5 G.C.A. §5425(e), and 2 G.A.R., Div. 4, Chap. 12, §12201(a). Here, as stated above, TENORIO's appeal is based on DPW's failure to issue a Decision on TENORIO's February 17, 2011 protest. Thus, without a DPW decision on TENORIO's February 17, 2011 protest, this matter is not properly before the Public Auditor and the Public Auditor does not have the jurisdiction to hear it. Further, a copy of the purchasing agency's protest decision is a required part of the Notice of Appeal and an appeal lacking the protest decision being appealed is

1 subject to dismissal. 2 G.A.R., Div. 4, Chap. 12, §12104(b)(6) and (8). Thus, as there is no
2 decision on TENORIO's February 17, 2011 protest, pursuant to 2 G.A.R., Div. 4, Chap. 12,
3 §12104(b)(8), this matter is hereby dismissed without prejudice.

4 2. The Public Auditor finds that she has the authority to compel DPW to produce the
5 Decision for TENORIO's February 17, 2011 Protest. The Public Auditor shall have the power
6 to compel the production of documents by any employee of the Government of Guam. 5 G.C.A.
7 §5703 and 2 G.A.R., Div. 4, Chap. 12, §12103(a). Further, the Public Auditor shall use this
8 authority to promote the integrity of the procurement process and purposes of 5 G.C.A. Chapter
9 5. Id. Here, however, the Public Auditor declines to compel the production of the
10 aforementioned decision because the Public Auditor finds that DPW had less than thirty (30)
11 days to review and consider TENORIO's protest before TENORIO's appeal in this matter was
12 filed. DPW is hereby reminded that Guam Procurement Law and Regulations require DPW to
13 decide TENORIO's February 17, 2011 protest. If a protest is not resolved by mutual agreement,
14 the head of a purchasing agency, or his or her designee shall **promptly** and **expeditiously** (bold
15 emphasis added) issue a decision in writing stating the reasons for the action taken, informing the
16 protestant of its right to administrative and judicial review, and a copy of such decision shall be
17 mailed or otherwise furnished immediately to the protestant, and any other party intervening. 5
18 G.C.A. §5425(c) and (d) and 2 G.A.R., Div. 4, Chap. 9, §9101(g). Thus, DPW is required to
19 issue a decision on TENORIO's protest promptly and expeditiously. The Public Auditor finds
20 that DPW will meet this standard if it renders its decision no later than 5:00 p.m. on March 31,
21 2011.

22 3. This is a Final Administrative Decision. The Parties are hereby informed of their right
23 to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance
24 with Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final
25 Administrative Decision. 5 G.C.A. §5481(a). A copy of this Decision shall be provided to the

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1 parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made
2 available for review on the OPA Website www.guamopa.org.

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4 **SO ORDERED** this 15th day of March, 2011.
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DORIS FLORES BROOKS, CPA, CGFM
11 PUBLIC AUDITOR
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