

**CABOT  
MANTANONA LLP**  
Edge Building, Second Floor  
929 South Marine Corps Drive  
Tamuning, Guam 96913  
Telephone: (671) 646-2001  
Facsimile: (671) 646-0777

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

JUN 03 2010

TYPE: 10-10 BY: MAV  
FILE NO. OPA-PA: 10-003

Attorney for Appellee, Guam Community College

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEAL**

In the Matter of Appeal of	)	Docket Number: OPA-PA-10-003
EONS ENTERPRISES CORP.,	)	
	)	
Appellant	)	
	)	
	)	<b>MEMORANDUM OF POINTS AND</b>
	)	<b>AUTHORITIES IN SUPPORT OF</b>
	)	<b>MOTION TO DISMISS</b>
	)	

Appellee Guam Community College, (hereinafter GCC), respectfully submits this Memorandum of Points and Authorities in Support of the Motion to Dismiss the appeal filed by Eons Enterprises Corp. (hereinafter Eons).

**STATEMENT OF FACTS**

On April 26, 2010, GCC sent a Notice of Non-Award to Eons, notifying them that The Infinity Group, d.b.a. Alliance Metal Specialties, was awarded the bid to install typhoon shutters at the Student Services and Administration Building. Eons received the letter on April 27, 2010. See attached Exhibit "A."

On May 3, 2010, Eons sent a letter to GCC asking them to "re-evaluate" their bid. See attached Exhibit "B." GCC's Procurement Officer, Joleen Evangelista, did not consider Eons' three sentence letter to amount to a legal protest (per 2 G.A.R. § 9101(c)). See accompanying Declaration of Joleen Evangelista.

**ORIGINAL**

On May 24, 2010, Eons received GCC's response to their May 3, 2010 letter. GCC's response was dated May 10, 2010, but in their appeal, Eons insists they did not receive GCC's response until May 24, 2010. See attached Exhibit "C."

On May 26, 2010, Eons filed their appeal OPA-PA-10-003 with the Office of Public Accountability.

### **ARGUMENT**

GCC's Motion to Dismiss should be granted because the Public Auditor lacks jurisdiction to hear this appeal. The jurisdiction of the Office of Public Accountability is limited to matters properly submitted to the Public Auditor. 5 G.C.A. § 5703; 2 G.A.R. §12103; see also TRC Environmental Corp. v. O.P.A., Guam Superior Court SP 160-07 (2008), Decision and Order on Petition for Writ of Mandate, p.5. In order to properly submit an appeal to the Public Auditor, an aggrieved party must first file a protest with the agency, and then receive a written notice of decision from that agency. 5 G.C.A. § 5425(a-e). Therefore, the Public Auditor does not have jurisdiction over cases where an aggrieved party failed to properly protest the agency.

Eons failed to properly protest GCC's decision to award the typhoon shutter installation bid to Alliance Metal Specialties. GCC does not dispute that Eons is an aggrieved party. An aggrieved party who disputes an agency bid award may file a protest with the agency and the "protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto." 5 G.C.A. § 5425(a). Eons knew of the agency decision awarding the bid to Alliance Metal Specialties on April 27, 2010. See attached Exhibit "A."

Eons sent a letter requesting a "re-evaluation of the bid awards" on May 3, 2010. See attached Exhibit "B." This letter is insufficient to amount to a legal protest under Guam law. 2 G.A.R. § 9101(c) specifically establishes the requirements:

(c) Filing of Protest.

(1) When Filed. Protests shall be made in writing to the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency, and shall be filed in duplicate within 14 days after the protestor knows or should have known of the facts giving rise thereto. A protest is considered filed when received by the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency. Protests filed after the 14 day period shall not be considered.

(2) Subject of Protest. Protestors may file a protest on any phase of solicitation or award including, but not limited to, specifications preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer.

(3) Form. To expedite handling of protests, the envelope should be labeled "Protest." The written protest shall include as a minimum the following:

- (a) the name and address of the protestor;
- (b) appropriate identification of the procurement, and, if a contract has been awarded, its number;
- (c) a statement of reasons for the protest; and
- (d) supporting Exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

(4) Notification of the Attorney General. The Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency shall submit a copy of the protest to the Attorney General within three days of the receipt of the written protest. (Emphasis added)

Eons' May 3, 2010 letter was not a formal protest to GCC. Eons' did not meet the requirements of 2 G.A.R. § 9101(c)(3) for three reasons. First, Eons did not use the requisite word "protest" anywhere in its correspondence to GCC. Second, Eons did not provide a written statement of reasons for the protest. The letter was three sentences long and only asked for a "reevaluation" of the bids since Eons submitted the lowest

bid. Third, Eons' only attached documentation was a copy of the Notice of Non-Award from GCC dated April 26, 2010.

Eons' May 3, 2010 letter is more analogous to a "complaint" as defined in 2 G.A.R. § 9101(b):

Complaint to Procurement Officer. Complainants should seek resolution of their complaints initially with the Procurement Officer or the office that issued the solicitation. Such complaints may be made verbally or in writing.

Complaints are less formal than protests. Since Eons' May 3, 2010 letter did not meet all of the formal requirements of a protest, it cannot be anything more than a complaint, as defined by 2 G.A.R. § 9101(b). The law requires an agency to respond and issue a formal "notice of decision" to protests. 2 G.A.R. § 9101(g). If the aggrieved party is not satisfied with the agency's notice of decision, they can file a "request for reconsideration" of that decision, or they can file an appeal with the Office of Public Accountability. 2 G.A.R. § 9101(h); 5 G.C.A. § 5425. Unlike protests, the law does not require an agency to respond or issue a "notice of decision" to complaints.

Since Eons' May 3, 2010 letter was a complaint, as opposed to a formal protest, GCC was not required to issue a notice of decision. Eons could have corrected this by filing a formal protest by May 11, 2010 (14 days after April 27, 2010). Since Eons' did not properly protest GCC's bid award to Alliance Metal Specialties by May 11, 2010, Eons waived any right to file a protest. A protest and notice of decision are prerequisites for the Public Auditor's jurisdiction over an appeal. 5 G.C.A. § 5425. Since Eons' did not protest on time, the Public Auditor lacks jurisdiction for this appeal.

**CONCLUSION**

The Public Auditor should grant GCC's Motion to Dismiss because she lacks jurisdiction. Eons' May 3, 2010 letter was a complaint, and not a formal protest. Since Eons' letter was not a protest, and Eons failed to submit a formal protest by May 11, 2010, GCC was not required to issue a notice of decision. Without a protest and notice of decision, the Public Auditor lacks jurisdiction to hear this appeal and GCC's Motion to dismiss should be granted.

Respectfully submitted this 2 day of June, 2010.

CABOT MANTANONA LLP  
Attorney for Guam Community College

By:

  
SARAH A. STROCK

# GCC

GUAM COMMUNITY COLLEGE

*Kulehon. Kurnuridat Gudhan*

Accredited by the  
Western Association of  
Schools and Colleges

Date: April 26, 2010

To: EONS Enterprises Corporation  
121 E. Ligan Avenue  
Dededo, Guam 96929

Via: Carmen K. Santos, CPA *CKS*  
Vice President of Business and Finance

## NOTICE OF NON-AWARD

Bid No: GCC-FB-10-009  
Description: Install Typhoon Shutters at the Student Services and Administration Building (Building 2000)

Dear Mr. Frank Wu:

This letter is to advise you that the above bid has been evaluated and awarded to The Inifiniti Group,, Inc. dba: Alliance Metal Specialties. They were deemed the lowest, most responsible and responsive bidder.

Guam Community College appreciates your time and effort in preparing for this bid and encourages you to bid in the future.

Should you have any questions, please contact Joleen Evangelista, Procurement & Inventory Administrator at 735-5540/5542.

Thank you for your participation and interest.

*Joleen M. Evangelista*  
Joleen M. Evangelista  
Procurement & Inventory Administrator

*Frank Wu*  
*MAX MANSABAT*  
*04/27/2010*

EXHIBIT "A"



**EONS ENTERPRISES CORP.**  
121 East Liguao Avenue  
Dededo, Guam 96929  
Tel: (671) 637-6869  
Fax: (671) 637-6871, E mail :eonscons@ite.net

Guam Community College  
MATERIAL MANAGEMENT

RECEIVED

MAY 03 2010

2:35pm

Initials: *J. Evangelista*  
Forwarded to: \_\_\_\_\_  
Date Forwarded: \_\_\_\_\_

Date: May 3, 2010

To: Joleen M. Evangelista  
Procurement & Inventory Administrator  
Guam Community College  
Mangilao, Guam

Subject: REQUEST FOR RE EVALUATION OF THE BID AWARDS  
Re: Install Typhoon Shutters at the Student Services and Administration  
Building (Building 2000)  
GCC-FB-10-009

Madam,

This is connection with the bid status send to us dated April 26, 2010 as hereto attached.

We respectfully request for consideration for re evaluation of the bids of the above referenced project due to fact that we submitted the lowest bid to the project which should have been considered as it is most favorable to the government.

We greatly appreciate you consideration on this matter.

Sincerely,

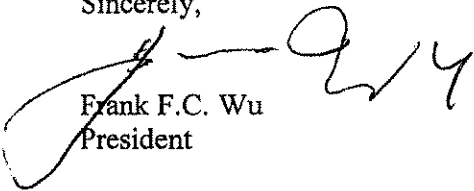
  
Frank F.C. Wu  
President

EXHIBIT "B"

**GCC**

**GUAM COMMUNITY COLLEGE**

*Kolehon Kumuniddat Guahan*

Accredited by the  
Western Association of  
Schools and Colleges

*11100000*

May 10, 2010

To: Frank F.C. Wu  
President  
EONS ENTERPRISES CORP.  
121 Eas5t Liguan Avenue  
Dededo, Guam 96929

VIA: *JMW* Joleen M. Evangelista, Procurement & Inventory Administrator  
Jose Quitugua, Facilities Coordinator *J*  
Carmen K. Santos, Vice President Business & Finance *CMS*

Subject: Request for reevaluation of the bid awards  
GCC-FB-10-009 (Install Typhoon Shutters at the Student Services and  
Administration Building – Building 2000)

Dear Mr. Wu,

This letter is to advise you that the Guam Community College received your letter dated May 3, 2010 regarding the above. GCC has evaluated the bids in detail and remains firm in its decision on the award. Please note that the bids are evaluated based on the lowest, responsive and responsible bid.

We thank you for your participation in this bid and encourage you to participate again in the future.

Sincerely,

*Mary A. Y. Okada*

Mary A. Y. Okada  
President

EXHIBIT "C"