

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



FAX

To:	David L. Manning Head of Purchasing Agency Guam Solid Waste Authority Under the Management of Federal Receiver Gershman, Brickner, & Bratton, Inc. 542 North Marine Corps Drive Tamuning, Guam 96913	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 646-4379 x 201 or 212 (671) 649-3777	Pages:	6 (including cover page)
CC:	Phillip Torres (Attorneys for Maeda Pacific Corporation)	Date:	August 18, 2015
Phone: Fax:	(671) 646-6050 (671) 646-6666	Phone: Fax:	475-0390 x. 203 472-7951

Re: OPA-PA-15-008 Notice of Receipt of Appeal

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

August 18, 2015

David L. Manning
Head of Purchasing Agency
Guam Solid Waste Authority
Under the Management of Federal Receiver
Gershman, Brickner, & Bratton, Inc.
542 North Marine Corps Drive
Tamuning, Guam 96911

Re: Notice of Receipt of Appeal – OPA-PA-15-008

Dear Mr. Manning,

Please be advised that Maeda Pacific Corporation (Maeda) filed an appeal with the Office of Public Accountability (OPA) on August 17, 2015 related to the decision on contract or breach of contract controversy by Guam Solid Waste Authority (GSWA) relative to Contract No: GSWA-12-02 Harmon Residential Transfer Station. OPA has assigned this appeal case number OPA-PA-15-008.

Immediate action is required of GSWA 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 notice of appeal filed with OPA is enclosed for your reference.

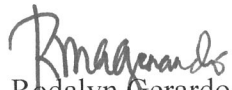
Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities 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), please submit 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, to OPA by **Tuesday, August 25, 2015**, five work days following receipt of this notice of appeal; and 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, September 1, 2015**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to Maeda. OPA respectfully asks that GSWA provide one original and two copies of the procurement record as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 203, or jhernandez@guamopa.org, should you have any questions regarding this notice.

Sincerely,



Rodalyn Gerardo CIA, CGFM, CPA, CGAP, CGMA
Audit Supervisor

Enclosure: First Four Pages of Notice of Appeal – OPA-PA-15-008

CC: Phillip Torres, Attorney for Maeda



RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

DATE: 8/17/15
TIME: 3:40 AM PM BY: Yuka
FILE NO OPA-PA: 15-008

PART I- To be completed by OPA

In the Appeal of)
)
MAEDA PACIFIC CORPORATION)
(Name of Company), APPELLANT)
)
)
_____)

NOTICE OF APPEAL

Docket No. OPA-PA 15-008

PART II- Appellant Information

Name: MAEDA PACIFIC CORPORATION
Mailing Address: Post Office Box 8110
Tamuning, Guam 96931
Business Address: 150 Harmon Sink Road
Tamuning, Guam 96913
Email Address: tnielsenmpc@teleguam.net
Daytime Contact No: (671) 646-6050
Fax No.: (671) 646-6666

PART III- Appeal Information

- A) Purchasing Agency: Guam Solid Waste Authority
- B) Identification/Number of Procurement, Solicitation, or Contract: Harmon Residential Transfer Station;
Contract No. GSWA-12-02.
- C) Decision being appealed was made on July 19, 2015 (date) by:
 Chief Procurement Officer **Director of Public Works** Head of Purchasing Agency
David L. Manning
Receiver Representative

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

- D) Appeal is made from:
(Please select one and attach a copy of the Decision to this form)
- Decision on Protest of Method, Solicitation or Award
- Decision on Debarment or Suspension
- Decision on Contract or Breach of Contract Controversy
(Excluding claims of money owed to or by the government)
- Determination on Award not Stayed Pending Protest or Appeal
(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

ORIGINAL

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PART IV- Form and Filing

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

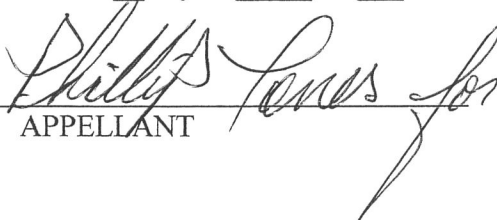
Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.

PART V- 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.

Submitted this 17th day of August, 2015.

By: 
APPELLANT

or

By: **PHILLIP TORRES, ESQ.**
Appellant's Duly Authorized Representative
(Address) **TORRES LAW GROUP**
(Phone No.) 130 Aspinall Avenue, Suite 2A
Hagatna, Guam 96910
(671) 477-9891

APPENDIX A

APPELLANT'S
STATEMENT
OF ISSUES

TORRES LAW GROUP
A PROFESSIONAL LAW CORPORATION
130 ASPINALL AVENUE, SUITE 2A, HAGÁTÑA, GUAM 96910-5018

August 17, 2015

STATEMENT OF ISSUES

Re: *Guam Solid Waste Authority*
Harmon Residential Transfer Station; Contract No. GSWA-12-02

Maeda Pacific Corporation ("Appellant") appeals from the Final Decision issued by Gershman, Brickner & Bratton, Inc. ("GBB") as representatives and Receiver for the Guam Solid Waste Authority ("GSWA") regarding the Harmon Residential Transfer Station, Contract No. GSWA-12-02. Appellant asserts that it is owed Five Hundred Six Thousand Four Hundred Eighty-Three Dollars and Thirty-Nine Cents (\$506,483.39). GSWA has assessed Six Hundred Sixty-Three Thousand Dollars (\$663,000.00) as liquidated damages and asserts that it is owed One Hundred Fifty-Six Thousand Five Hundred Sixteen Dollars and Sixty-One Cents (\$156,516.61), the difference between the amount owed to Appellant and the assessment of liquidated damages by GSWA.

Appellant's Appeal is over the validity and enforceability of paragraph IV of the Contract, the liquidated damages provision, executed between the parties on November 1, 2012. The liquidated damages provision provides for liquidated damages in the sum of Three Thousand Three Hundred Dollars (\$3,300.00) per day for breach of the Contract for failing, neglecting and refusing to complete the work in the time specified under the Contract. Under that provision, liquidated damages are assessed for each calendar day that the Contract is in default.

In accordance with modern law and precedent concerning public contracts, Appellant seeks a determination that the liquidated damages clause is void or unenforceable. Such a decision does not prevent the enforceability of the rest of the Contract, pursuant to paragraph 15 entitled Severable Provisions.

PHILLIP TORRES

Of Counsel: Lawrence J. Teker (inactive), Samuel S. Teker,
Nagatomo Yamaoka and Benjamin F. Hueber

Email: ptorres@tttguamlawyers.com
Telephone: (671) 477-9891/4 | Facsimile: (671) 472-2601

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	AUG/18	01:53PM	6493777	0:01:24	7	MEMORY OK	SG3 3798

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AUG 18 2015

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rgerardo@guamopa.org

By: Linda J. Ibanez

GSWA Services Administrator

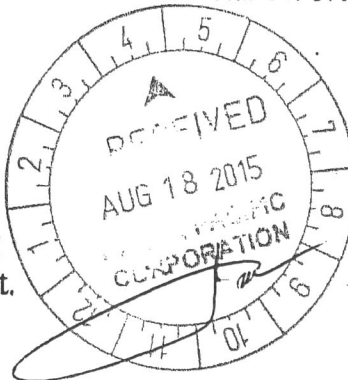
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CC:	Mr. Arthur B. Clark Chief Policy Advisor Office of the Governor Ricardo J. Bordallo Governor's Complex Adelup, Guam 96910 (T) (671) 472-8931 (F) (671) 477-4826	Pages:	6 (including cover page)
CC:	Mr. Anthony Blaz Director Department of Administration Tamuning, Guam (T) (671) 475-1101 (F) (671) 477-6788	Date:	August 18, 2015
		Phone:	475-0390 x. 203
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Re:	OPA-PA-14-010 Notice of Receipt of Appeal		

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