



UNIVERSITY of GUAM  
Unibetsedât Guahan

RECEIVED  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

JUN 04 2008

TIME: \_\_\_\_\_

BY: \_\_\_\_\_  
Office of the President  
Legal Counsel

12:40pm  
A. Camilleri  
08-005

**OFFICE OF THE PUBLIC AUDITOR**  
**PROCUREMENT APPEAL**

In the Appeal of	)	Docket No. OPA-PA 08-005
	)	
GUAM CLEANING MASTERS,	)	<b>AGENCY'S REBUTTAL TO</b>
	)	<b>APPELLANT'S COMMENTS</b>
APPELLANT.	)	<b>ON AGENCY REPORT</b>
_____	)	

Appellee University of Guam ("University"), by and through its counsel of record, Victorina M.Y. Renacia, submits its Agency's Rebuttal to Guam Cleaning Master's (GCM's) Comments on Agency Report in accordance with 2 G.A.R. § 12104 (c)(4) as follows:

1. The University's Agency Report was timely filed, in accordance with 2 G.A.R. § 12104 (c)(3).

Appellant GCM insists on pursuing its claim that the University's Agency Report was untimely filed. 2 G.A.R. § 12104 (c)(3) states in pertinent part that "The Agency Report shall be submitted within ten working days of receipt of (sic) by the Agency of the notice of Appeal of a Method, Solicitation, or Award; or notice of Appeal of a Suspension." The University received the GCM Notice of Appeal from the Office of the Public Auditor ("OPA") on April 16, 2008. Exhibit 1. The University also received a copy of the Appeal from GCM on the same day, April 16, 2008. Exhibit 2. Ten working days from April 16, 2008 is April 30, 2008, the date on which the University filed its Agency Report. Exhibit 3. Additionally, Ms. Theresa Gumataotao from the OPA, who was present at the hearing on May 12, 2008, verified that the University had

**ORIGINAL**

timely filed its Agency Report in response to GCM's issue of the University's alleged untimely filing.

GCM appears to confuse the filing of the Agency Report with the filing of the University's Procurement Record relevant to the appeal, which is due "within five (5) working days of receiving notice of an Appeal". 2 G.A.R. § 12104 (c)(3). Five working days from April 16, 2008, the date on which the University received notice of the appeal, was April 23, 2008. Further, Exhibit 1, issued by the OPA, states that the University's Procurement Record is due "by April 23, 2008, five working days following receipt of this notice of appeal." The University filed its Procurement Record on that date. Exhibit 4. Clearly, GCM's claim of the University's untimely filing is without merit.

2. GCM's appeal should be dismissed because there is no issue to appeal.

Based on the decision of the Public Auditor in Appeal No. OPA-PA-07-009, *In The Appeal of Pacific Security Alarm, Inc.*, dated April 11, 2008, the University *sua sponte* on May 13, 2008 voided the cancellation of Bid No. P11-08. Exhibit 5. This action was taken in good faith, in response to GCM's allegations. Further, on that same day it issued its Notice of Intent to Award-Invitation for Bid to GCM. Exhibit 6. Currently, the parties are negotiating a contract for Student Housing Custodial Services. Because the University has taken the above actions, GCM's allegations and arguments against the University are now moot, and there is no issue ripe for appeal. The appeal of GCM should be dismissed with prejudice at this time.

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3. GCM is not entitled to attorney's fees under 5 GCA § 5425(h).

GCM is not entitled to an award of attorney's fees under 5 GCA § 5425(h).<sup>1</sup>

Neither is GCM entitled to costs because the protest has not been sustained. 5 GCA § 5425(h).

Therefore, the University respectfully requests that the appeal of GCM be dismissed with prejudice at this time, and that the OPA award all legal and equitable remedies that the University may be entitled to as a result.

**Respectfully submitted** this 4<sup>th</sup> day of June, 2008, by:

  
Victorina M.Y. Renacia  
University Legal Counsel

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<sup>1</sup> 5 GCA § 5425 (h) states in relevant part:

- (h) Entitlement to Costs. In addition to any other relief or remedy granted under Subsection (c) or (e) of this Section or under Subsection (a) of § 5480 of this Chapter, including the remedies provided by Part B of Article 9 of this Chapter, **when a protest is sustained**, the protestant shall be entitled to the reasonable costs incurred in connection with the solicitation and protest, including bid preparation cost, **excluding attorney's fees**, if: ....

Emphasis added.

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

Phone: (671) 475-0390  
FAX: (671) 472-7951



OFFICE OF THE PUBLIC AUDITOR

# Fax

To: Dr. Helen J.D. Whippy – Interim President From: Theresa Gumataotao

OPA Procurement Appeals

Agency: University of Guam

Pages: 5 (Including cover) + 1 Pgf. (fax cover sent in) *error*

CC: Douglas B. Moylan – Attorney for Appellant Date: Wednesday – April 16, 2008

Karen C. Caballero – Appellant

Fax: 734-2296 / 475-9293 / 646-4707

Phone: 735-2990 / 475-9292 / 646-2002

Re: OPA-PA-08-005: Receipt of Notice of Appeal re UOG Bid No. P11-08 relative to the procurement of Student Housing Custodial Services

Urgent  For Review  Please Comment  Please Reply  Please Recycle

●Comments:

See attached letter and enclosures. Further, please acknowledge receipt by re-sending this cover page along with the Receipt of Appeal Letter, stamped with your agency name, date, and initials. Thank you.

Theresa x.207 [tgumataotao@guamopa.org](mailto:tgumataotao@guamopa.org)

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

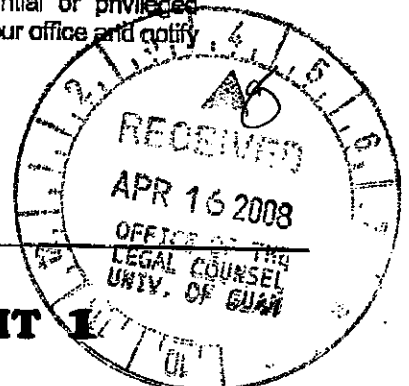


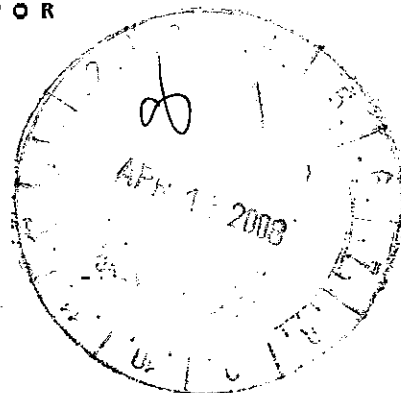
EXHIBIT 1



## OFFICE OF THE PUBLIC AUDITOR

April 16, 2008

Helen J.D. Whippy PhD  
Interim President  
University of Guam  
UOG Station  
Mangilao, Guam 96923



VIA FACSIMILE 734-2296

Re: Receipt of Notice of Appeal: UOG Bid No. P11-08 relative to the procurement of Student Housing Custodial Services

Dear Dr. Whippy:

Please be advised that Guam Cleaning Masters filed an appeal with the Office of the Public Auditor on April 15, 2008, of your protest decision on the above-stated procurement action. The appeal has been assigned Master File No. OPA-PA-08-005.

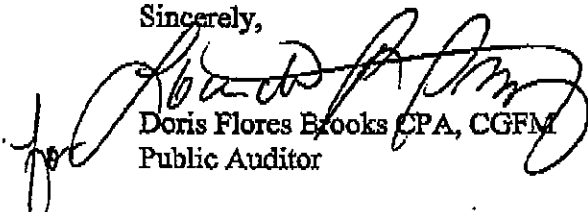
Immediate action is required of your office pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of Title 2 of the Guam Administrative Regulations. Copies of the rules, the appeal, and all filing deadlines are available at our office and on our website [www.guamopa.org](http://www.guamopa.org). The transmittal letter and notice of appeal form filed are enclosed for your reference.

Please provide the required notice of this appeal to the required parties with instructions that they should communicate directly with OPA regarding the appeal. You are also responsible for giving notice to the Attorney General or other counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your counsel.

Please submit one complete copy of the procurement record to OPA by April 23, 2008, five working days following receipt of this notice of appeal. When filing required documents with our office please provide an original and two copies for OPA and serve a copy to the Law Offices of Douglas B. Moylan the Appellant's attorney.

Thank you for your prompt attention to this matter. Please contact Theresa Gumataotao ext. 207 if you have any questions regarding this notice.

Sincerely,

  
Doris Flores Brooks CPA, CGFM  
Public Auditor

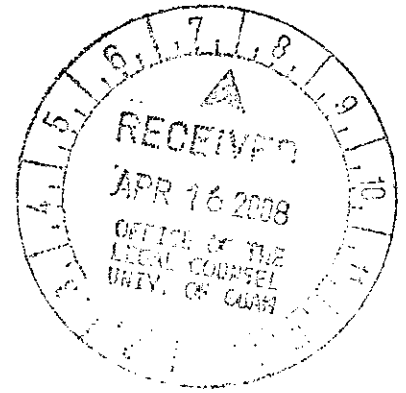
Enclosure: Transmittal Letter and Notice of Appeal Form OPA-PA-08-005

cc: Mr. Douglas B. Moylan - Attorney for Appellant (Via Facsimile 475-9293)  
Ms. Karca C. Caballero - GMC Operations & Finance Manager / Appellant (Via Facsimile 646-4707)  
Suite 401, ORA Building  
238 Archbishop Flores Street, Hagåtña, Guam 96910  
Tel (671) 475-0390 • Fax (671) 472-7951  
[www.guamopa.org](http://www.guamopa.org) • Hotline: 47AUDIT (472-834)

**EXHIBIT 1**



April 15, 2008



**Honorable Doris Flores Brooks  
Public Auditor**

Office of the Public Auditor  
Suite 401 Pacific News Building  
238 Archbishop Flores Street  
Hagåtña, Guam

**Subject: Procurement Appeal**

Dear Public Auditor:

Please find the attached Procurement Appeal (Form Appendix A) submitted this date on behalf of Guam Cleaning Masters ("GCM") pertaining to the cancellation of University of Guam's ("UOG's") Bid Number P11-08 (for "*Student Housing Custodial Services*") on February 29, 2008 for "Insufficient Funds." Bids for this procurement were received by UOG and opened on February 7, 2008.

On March 12, 2008 GCM submitted its bid protest letter. On March 31, 2008 UOG issued its letter rejecting the bid protest and indicating that the bid would be re-bid. On April 2, 2008 GCM sent a request for reconsideration based upon erroneous information contained in UOG's bid protest rejection letter. No response was received.

Please also find the attached completed Hearing Request (Form Appendix D) submitted on behalf of our client, GCM.

Your kind attention to this procurement appeal is appreciated. Thank you.

Respectfully,

**Douglas B. Moylan**

Enclosures

**EXHIBIT 2**

Suite 201 Skinner Plaza Building • 138 West Seaton Boulevard • Hagåtña  
Mailing Address: Law Offices of Douglas B. Moylan • P.O. Box 7822 • Tamuning, Guam 96931 • USA  
(671) 475-9292 • (671) 483-9292 (cellular) • (671) 475-9293 (fax) • [dbmoylan@gmail.com](mailto:dbmoylan@gmail.com)

1<sup>st</sup> Elected Attorney General of Guam • 3 term Legislative Counsel

COPY



UNIVERSITY of GUAM  
Unibetsedåt Guahan

RECEIVED  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

APR 30 2008

TIME: 2:30 PM  
BY: AC  
FILE No. OPA-PA 08-005

Office of the President  
Legal Counsel

**PROCUREMENT APPEAL**

In the Appeal of	)	
	)	
GUAM CLEANING MASTERS,	)	CASE NO: OPA-PA 08-005
	)	
APPELLANT.	)	<b>AGENCY REPORT</b>
_____	)	

Appellee University of Guam, by and through its counsel of record, Victorina M.Y. Renacia, submits its Agency Report in the form required under 2 G.A.R. § 12105:

- (a) A copy of the protest: **Submitted previously by the University to the Office of the Public Auditor (OPA) on April 23, 2008 as part of its Procurement Record.**
- (b) A copy of the bid or offer submitted by the Appellant and a copy of the bid or offer that is being considered for award or whose bid or offer is being protested, if any had been submitted prior to the protest: **Submitted previously by the University to the OPA on April 23, 2008 as part of its Procurement Record.**
- (c) A copy of the solicitation, including the specifications or portions thereof relevant to the protest: **Submitted previously by the University to the OPA on April 23, 2008 as part of its Procurement Record.**

**EXHIBIT 3**

  
*Douglas B. Moylan*  
ATTORNEY AT LAW

Received: 4/30/08; Dm; 2:30pm



UNIVERSITY of GUAM  
Unibetsedät Guahan

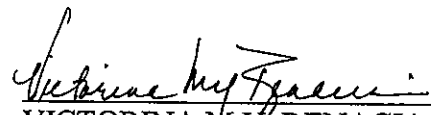
Office of the President  
Legal Counsel

OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEAL

In the Appeal of	)	
	)	
GUAM CLEANING MASTERS,	)	CASE NO: OPA-PA 08-005
	)	
Appellant.	)	
	)	
_____	)	

The UNIVERSITY OF GUAM ("University"), by and through its legal counsel, VICTORINA M.Y. RENACIA, hereby files the Procurement Record relevant to the above-captioned appeal, pursuant to 2 GAR § 12104 (c) (3).

Dated: 23 April 2008

  
VICTORINA M.Y. RENACIA  
University Legal Counsel

**Office of The Public Auditor**

**Bid No. P11-08 Student Housing Custodial Services**

1 OF 5  
2 OF 5  
3 OF 5

**RECEIVED**  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

 4/23/08  
Acknowledgement Date

APR 23 2008  
TIME: 1:15 PM  
BY: \_\_\_\_\_  
FILE No. (OPA-PA) 08-005

UOG Station, Mangilao, Guam 96923 Telephone: (671) 735-2992/2978 Fax: (671) 734-2296  
vrenacia@ugam.uog.edu

A Land Grant Institution Accredited by the Western Association of Schools and Colleges  
UOG is an equal employment opportunity employer and provider.



Attn: To Vicky



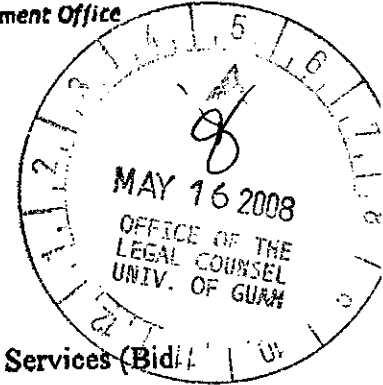
UNIVERSITY OF GUAM  
UNIBETSEDAF GUAHAN

Administration and Finance  
Consolidated Procurement Office

**BID STATUS**

May 13, 2008

Mr. Alex Thomas  
Owner/President  
Guam Cleaning Masters  
P.O. BOX 9500  
Dededo, Guam 96929  
Fax: 646-4707



Subject: Bid Status re UOG BID No. P11-08, Student Housing Custodial Services (Bid  
Opened Thursday, February 7, 2008 at 2:00 p.m.)

The following is the result of the above mentioned bid. Refer to the items checked below.

- Canceled (in its entirety), or partially cancelled due to:
  - Insufficient funds;
  - Change of specifications; or
  - Insufficient number of bidders
- Rejected due to:
  - Late submission of bid;
  - No bid security or insufficient bid security amount submitted; as required by General Terms and Conditions;
  - Not meeting the delivery requirement as stated in the IFB
  - Non-conformance with the specifications;
  - Inability to provide future maintenance and services to the equipment;
  - High price; and
  - Others:

Bid is recommended for award to:

**Other: This is official notification that the cancellation of UOG BID No. P11-08 dated February 29, 2009 is hereby VOIDED, in accordance with the OPA's decision in The Appeal of Pacific Security Alarm, dated April 11, 2008.**

Sincerely,

Helen J.D. Whippy  
Interim President

Please acknowledge receipt and fax back to 735-3118.

Guam Cleaning Masters

UOG Station, Mangilao, Guam 96923 Tel (671) 735.2925 Fax. (671) 734.3118  
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**EXHIBIT 5**



UNIVERSITY OF GUAM  
UNIBETSEDAT GUAHAN

Administration and Finance  
Consolidated Procurement Office

May 13, 2008

Mr. Alex Thomas  
Owner/President  
Guam Cleaning Masters  
P.O. Box 9500  
Dededo, Guam 96929  
Facsimile: 646-4707

RE: NOTICE OF INTENT TO AWARD – INVITATION FOR BID  
NO. P11-08, Student Housing Custodial Services

Dear Mr. Thomas:

As a result of our analysis in the above-referenced bid, your bid for Student Housing Custodial Services was considered the lowest responsible and responsive bidder.

Please be advised that this is a Notice of Intent to Award. A contract between GCM and the University will follow shortly.

You can contact me at 735-2925 for any questions or concerns.

Sincerely,

Helen J.D. Whippy  
Interim President

Please acknowledge receipt and fax to 734-3118

Guam Cleaning Masters

UDG Station, Mangilao, Guam 96923 Tel. (671) 735.2925 Fax. (671) 734.3118  
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EXHIBIT 6