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 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Ms. Pilar Laguaña President & CEO Guam Visitors Bureau 401 Pale San Vitores Road Tumon, Guam 96913 Phone: (671) 646-5278 Fax: (671) 646-3917/646-8861	From:	Anthony Camacho Hearing Officer Office of Public Accountability
	Thomas J. Fisher, Esq. (Attorney for GVB) Fisher & Associates 167 East Marine Corp. Drive Hagåtña, Guam 96910 Phone: (671) 472-1131 Fax: (671) 472-2886	Pages:	5 (including cover page)
CC:	Mr. Luis E. Bustamante President Appellant: JJ Global Services 215 Rojas Street, Suite 126 Harmon Industrial Park Tamuning, Guam 96913 Tel: (671) 632-1179 Fax: (671) 632-3550	Date:	March 22, 2019
	Vanessa L. Williams, Esq. (Attorney for Appellant JJ Global) Law Office of Vanessa L. Williams, P.C. 414 West Soledad Avenue GCIC Bldg., Suite 500 Hagåtña, Guam 96910 Tel: (671) 477-1389 Email: VLW@vlwilliamslaw.com	Phone:	(671) 475-0390 x. 208
	Mitchell F. Thompson, Esq. (Attorney for Interested Party Landscape Management Systems, Inc.) Thompson Thompson & Alcantara 238 Archbishop Flores Street, Suite 801 Hagåtña, Guam 96910 Tel: (671) 472-2089 Fax: (671) 477-5206	Fax:	(671) 472-7951

Re: OPA-PA-19-001 Decision and Order RE Purchasing Agency's Motion to Dismiss an Appeal

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Thank you,
 Jerrick Hernandez, Auditor
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**OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS**

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6 IN THE APPEAL OF,

7 JJ GLOBAL SERVICES,

8 Appellant
9

) APPEAL NO: OPA-PA-19-001

) **DECISION AND ORDER RE
PURCHASING AGENCY'S MOTION TO
DISMISS AN APPEAL**

10
11 **To: Purchasing Agency:**
12 Guam Visitor's Bureau
13 C/O Thomas J. Fisher, Esq.
14 Fisher & Associates
15 167 East Marine Corps Drive
16 Hagåtña, Guam, 96910
17 Facsimile: (671) 472-2886

18 **Appellant:**
19 JJ Global Services
20 C/O Vanessa L. Williams, Esq.
21 Law Office of Vanessa L. Williams P.C.
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25 **Interested Party:**
26 Landscape Management Systems, Inc.
27 C/O Mitchell F. Thompson, Esq.
28 Thompson Thompson & Alcantara
238 Archbishop Flores Street, Suite 801
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THIS MATTER, came before the Hearing Officer for Procurement Appeals on March 5, 2019 for a hearing on the Purchasing Agency's Motion to Dismiss an Appeal that was filed in this matter on February 6, 2019. Keiko Bustamante was present on behalf of the Appellant and he was represented by the Appellant's Counsel of Record, Vanessa L. Williams, Esq. Pilar

1 Laguana appeared on behalf of the Purchasing Agency and she was represented by the
2 Purchasing Agency's Counsel of Record, Thomas J. Fisher, Esq. Robert Salas appeared on
3 behalf of the Interested Party and he was represented by the Interested Party's Counsel of
4 Record, Mitchell F. Thompson, Esq.
5

6 **BACKGROUND**

7 The Purchasing Agency alleges that the Appellant's November 19, 2018 protest
8 concerning the Purchasing Agency finding of non-responsibility is untimely because it was
9 lodged with the Purchasing Agency seventeen days after the Appellant received notice of the
10 finding of non-responsibility on November 1, 2018. Purchasing Agency's Motion to Dismiss at
11 2-3. However, the Appellant alleges that its protest was timely because it was filed twelve days
12 after it received the finding of non-responsibility on November 7, 2018. Appellant's Opposition
13 to Purchasing Agency's Motion to Dismiss at 3.
14

15 **DISCUSSION**

16 The key issue raised by the Purchasing Agency's Motion to Dismiss is whether the Public
17 Auditor has the jurisdiction to decide this matter. The Public Auditor shall have the power to
18 review and determine *de novo* any matter properly submitted to him. 5 G.C.A. §5703 and 2
19 G.A.R., Div. 4, Chap. 12, §12103(a). For procurement protests, any actual or prospective bidder,
20 offeror, or contractor who may be aggrieved in connection source selection, solicitation or award
21 of a contract, may protest to the Chief Procurement Officer, the Director of Public Works, or the
22 head of a purchasing agency. 5 G.C.A. §5425(a). The protest shall be submitted in writing
23 within fourteen days after such aggrieved person knows or should know of the facts giving rise
24 thereto and protests filed after the fourteen day period shall not be considered. *Id.*, and 2 G.A.R.,
25 Div. 4, Chap. 9, §9101(c)(1). If the protest is not resolved by mutual agreement, the Chief
26 Procurement Officer, the Director of Public Works, the head of a purchasing agency, or the
27 designee of one of these officers shall promptly issue a decision in writing and such decision
28 may be appealed by the protestant to the Public Auditor within fifteen days after receipt by the

1 protestant of the notice of decision. 5 G.C.A. §5425(c) and (e) and 2 G.A.R., Div. 4, Chap. 9,
2 §9101(g). Applying these procurement laws and regulations, for this matter to be properly
3 before the Public Auditor, the Appellant must have filed its protest no later than fourteen days
4 after it received the notice of non-responsibility from the Appellant.

5 Here, as set forth above, there is a dispute of fact between the Parties regarding the date
6 the Appellant received the Purchasing Agency's notice of non-responsibility. A review of the
7 Procurement Record submitted in this matter does not resolve this dispute. Specifically, the
8 Notice of Non-Responsibility dated October 31, 2018 indicates that the Appellant received it on
9 November 1, 2018. Procurement Record at 175-176. However, the same document submitted
10 with the Appellant's appeal that was filed with the Office of Public Accountability (OPA) on
11 January 2, 2019 indicates that it was received by the Appellant on November 7, 2018. Id., at
12 313-314. The Purchasing Agency alleges that the aforementioned discrepancy in the dates of
13 these two documents was caused by the Appellant's falsifying the date on the later document that
14 was submitted by the Appellant with its appeal with the intent of deceiving the OPA as to the
15 date it was received by the Appellant. Purchasing Agency's Motion to Dismiss at 2. In support
16 of the accusation, the Purchasing Agency submitted the Affidavit of Garrett Aguon, a messenger
17 employed by the Purchasing Agency, that states he delivered the Notice of Non-Responsibility
18 on the Appellant on November 1, 2018. Agency Report at 83. The Purchasing Agency also
19 submitted the Affidavit of Lisa Linek, an accounting manager employed by the Purchasing
20 Agency, who states that she instructed Garrett Aguon to deliver the notice to the Appellant on
21 November 1, 2018, that he did so, and that she filed a copy of the notice with the signed
22 acknowledgement in the Procurement Record. Agency Report at 84. Additionally, during
23 hearing on this motion, the Interested Party urged the OPA to accept these affidavits as evidence
24 supporting the Purchasing Agency's allegation that the notice filed with the Appellant's appeal
25 in this matter was falsified. The Appellant denies this allegation. Appellant's Opposition to
26 Dismiss at 3.

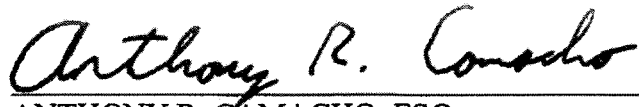
27 The Hearing Officer has the authority to rule on motions and evidence. 2 G.A.R., Div. 4,
28 Chap. 12, §12109(d) and (f). The only evidence produced in support of an explanation for the

1 discrepancy in the Procurement Record are the aforementioned affidavits. However, after
2 closely reviewing them, at best, they state that Linek instructed Aguon to deliver a letter to the
3 Appellant on the afternoon of November 1, 2018. Further, on unspecified dates, the letter was
4 signed in Aguon's presence by a female at the Appellant's office, and that Aguon gave the letter
5 to Linek who placed it in the procurement file. Agency Report at 83-84. These affidavits leave
6 it to the Hearing Officer to assume that the letter was the Notice of Non-Responsibility at issue
7 in this matter, and that it was delivered to the Appellant on November 1, 2018. The Hearing
8 Officer will not make this assumption. Further, without observing either Aguon and Linek
9 testifying under oath during direct and cross-examination, the Hearing Officer is unable to
10 determine whether they are credible witnesses. Therefore, the Hearing Officer finds that these
11 affidavits, by themselves, are insufficient proof that the discrepancy concerning the dates the
12 Notice of Non-Responsibility was received by the Appellant in the procurement record was
13 caused by the Appellant falsifying the notice's acknowledgement with the intent to deceive the
14 OPA.

15 16 CONCLUSION

17 Based on the foregoing, the Hearing Officer hereby DENIES the Purchasing Agency's
18 Motion to Dismiss the Appeal. However, the Purchasing Agency may raise this issue at the
19 hearing in this matter and may introduce any additional evidence or testimony that it may have
20 concerning it.

21
22 **SO ORDERED** this 21st day of March, 2019 by:

23
24 
25 ANTHONY R. CAMACHO, ESQ.
26 Hearing Officer
27
28

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005	942	4775206	11:05:06 a.m. 03-22-2019	00:01:32	5/5	1	EC	HS	CP21600



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-19-001 Decision and Order RE: Purchasing Agency's Motion to Dismiss an Appeal

1 message

Jerrick Hernandez <jhernandez@guamopa.com>
To: Vanessa Williams <vlw@vlwilliamslaw.com>

Fri, Mar 22, 2019 at 11:21 AM

Hafa Adai!

Please confirm receipt of this email and the attached document.

Regards,

Jerrick J.J.G. Hernandez, CGAP, CICA
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