



OFFICE OF THE PUBLIC AUDITOR

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

017 09 2011
TIME 2:00P BY JH
FILE NO. OPA-PA: 11-006

PART I- To be completed by OPA

In the Appeal of _____)
)
) **NOTICE OF APPEAL**
)
(Name of Company), APPELLANT)
) Docket No. OPA-PA 11-006
)
)

PART II- Appellant Information

Name: Juan C. Tenorio, P.E.
Mailing Address: 197 Hernan Cortez Ave. A3
Hagatna, Guam 96910
Business Address: Same as mailing address
Daytime Contact No: 479-8888/98 Office; 486-3311 Cell; 477-3277 Fax

PART III- Appeal Information

A) Purchasing Agency: Department of Public Works
Professional Engineering Services and Design for
B) Identification/Number of Procurement, Solicitation, or Contract: Tiyan Parkway
C) Decision being appealed was made on Noresponse to Protest Letter dated February 17, 2011
(date) by: _____
____ Chief Procurement Officer _____ Director of Public Works _____ Head of Purchasing Agency

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)

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

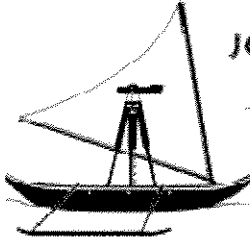
Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

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 the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 9 day of March, 2011.

By: Juan C. Tenorio, P.E.
APPELLANT

or 
By: _____
Appellant's Duly Authorized Representative
(Address)
(Phone No.)



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Tel: (671) 479-8888/98 • Fax: (671) 477-3277

Email: tenorioengineers1@guam.net • Website: www.juancetenorio-engineers.com



March 9, 2011

Mrs. Doris Flores Brooks
Public Auditor of Guam
Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

Subject: Procurement Appeal: Appendix A Part IV Items 1, 2, and 3.

Item 1. A concise, logically arranged, and direct statement of the grounds for appeal.

Summary:

It is the position of Juan C. Tenorio that his firm has been previously selected by DPW to perform Professional Engineering Services and Design for the Tiyan Parkway [Project GU-NH-ESTP (001)] by virtue of a Selection Letter authored by DPW Director Lawrence P. Perez dated March 14, 2007.

On March 20, 2007 Juan Tenorio responds to Mr. Perez's letter, thanking him for selecting his firm and requests a scoping meeting with DPW's key members of their engineering department.

April 2, 2007 Mr. Perez responds to Mr. Tenorio's March 20, 2007 letter informing Mr. Tenorio that DPW has agreed to work with the Program Management Team (PMT) to develop a comprehensive traffic analysis and conceptual plan.. Mr. Perez estimated that this would take approximately 4-6 month to complete. Mr. Perez also stated that DPW would be coordinating a scoping meeting with Tenorio's firm and thanked him for his patience.

On December 10, 2007 Mr. Tenorio write to Mr. Perez congratulating him on his work with PMT and suggesting that it may be time to commence the Feasibility Study and Design of the Tiyan Parkway.

No further communication from DPW regarding the project was received until November 18, 2010 in the form of a letter from DPW Director Andrew S. Leon Guerrero. In his letter Mr. Leon Guerrero informs Mr. Tenorio that his selection for the project has been rescinded because Mr. Tenorio was debarred.

Mr. Tenorio retains the services of Atty. J.P. San Nicolas to look into the matter, Mr. San Nicolas exchanges email communications with Atty. Philip Torres, who is GIAA

Conflicts Counsel. Both Mr. San Nicolas and Mr. Torres agree that debarment affect only “prospective” contracts and is not to be applied “retroactively.”

On February 7, 2011 Mr. Tenorio writes to the new DPW Director Ms. Joann S. Brown. Mr. Tenorio briefs Ms. Brown about the project and the subsequent problem that has now developed because of Mr. Leon Guerrero attempt to rescind the award to Tenorio and his firm,

On or about February 10, 2011 Tenorio learns that DPW has issued an RFP for **Professional Engineering Services - Tiyan Parkway Phase 1**

February 17, 2011 Mr. Tenorio writes a Letter of Protest to Director Brown to hopefully stop the RFP process and thus resolve this issue. Mr. Tenorio has yet to receive a response to his letter.

Mr. Tenorio now seeks the assistance of the Public Auditor of Guam to compel DPW to honor its selection of Mr. Tenorio’s firm to perform the Engineering Design Service for the Tiyan Parkway Project.

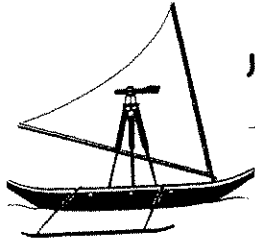
Item 2. A statement specifying the ruling requested.

Juan C. Tenorio, P.E., desires that the Public Auditor of Guam declare that Tenorio and his firm is entitled to perform Engineering Design Services for the Tiyan Parkway.

Item 3. Supporting exhibits, evidence, or documents to substantiate any claims and grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

- A. March 14, 2007 letter from DPW Director Lawrence P. Perez.
- B. March 20, 2007 letter from Juan C. Tenorio to Director Perez.
- C. April 2, 2007 letter from Director Perez to Mr. Tenorio.
- D. December 10, 2007 letter from Mr. Tenorio to Director Perez.
- E. November 18, 2010 letter from DPW Director Andrew S. Leon.
- F. Copy of email messages exchanged between Atty. J.P. San Nicolas and Atty. Phillip Torres regarding debarment.
- G. February 7, 2011 letter from Mr. Tenorio to DPW Director Ms. Joann S. Brown.
- H. February 17, 2011 Letter of Protest from Mr. Tenorio to DPW.

End of Appendix A Part IV



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Website: www.juantenorio-engineers.com



March 20, 2007

Mr. Lawrence P. Perez
Director
Department of Public Works
542 North Marine Corps Drive
Tamuning, Guam 96913

Subject: Professional Engineering Services for the
Feasibility Study and Design of the Tiyan Parkway
GU-NH-ESTP (001))

Hafa Adai, Mr. Perez,

I want to acknowledge receipt of your letter, dated March 14, 2007, and received in this office today, subject as above. The staff and management of JC Tenorio Engineers & Associates, Inc., wish to express their appreciation for being selected for this very meaningful and timely project.

Before we submit fee proposal, we are requesting a scoping meeting with key members of your engineering organization. The point of contact in this office is Mr. Jose Gutierrez.

Again, I thank you for the opportunity.

Si Yuus Maase,

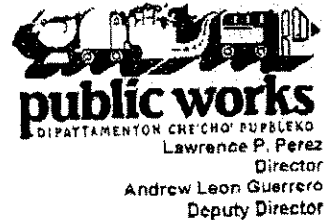
Juan C. Tenorio, P.E.
CEO/ Principal Engineer

Cc: JE Gutierrez



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



April 2, 2007

J.C. Tenorio Engineers and Associates, Inc.
Consulting Engineers
187 Hernan Cortes Avenue
Hagatna, Guam 96910

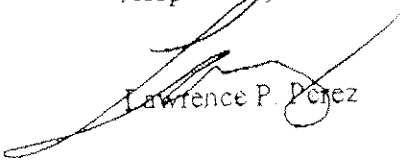
Ref. *Professional Engineering Services for the Feasibility Study and Design of the
Tiyon Parkway*

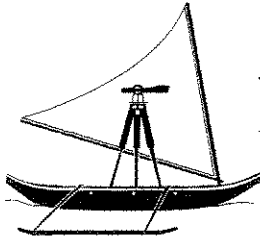
Hafa Adai yan Buenas! We acknowledge receipt of your letter dated March 20, 2007. At this time, DPW and the Program Management Team (PMT), have agreed to a joint venture in anticipation of aggressively pursuing the development of a comprehensive traffic analysis and conceptual plan for all the roadways within the parameters of the airport, inclusive of Route 10A/16 and Tiyon Parkway. The completion time for this undertaking is estimated to be approximately 4-6 months.

In consideration of this time frame, DPW will coordinate with your office to conduct the requested scoping meeting and further negotiations.

We thank you for your patience and look forward to working with your company as we engage in a partnership for progress for the betterment of our island.

Respectfully,


Lawrence P. Perez

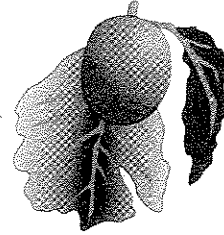


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Website: www.juanctenorio-engineers.com



December 10, 2007

Mr. Lawrence P. Perez
Director of Public Works
Government of Guam
542 North Marine Corps Drive
Tamuning, Guam 96913

Subject: Feasibility Study and Design of the Tiyan Parkway

Hafa Adai, Mr. Perez,

You are to be congratulated for successfully negotiating with the Program Management Team (PMT) to perform the Program Management Services (PMS). Now the Island can truly move forward with the development of a comprehensive traffic management and surface transportation system.

Perhaps this is the right time to bring up Feasibility Study and Design of the Tiyan Parkway project, as enumerated in your letters of March 14, and April 2, 2007 (copies attached). We understand that another engineering firm is being consulted for the design of the widening and reconstruction of Route 10A. Since previous studies indicate that the point of beginning for the Tiyan Parkway is Route 10A, it is appropriate to perform early coordination efforts with the designers of Route 10A.

We are ready to be partners in following thru on the Governor's vision to get Guam moving transportation-wise. The point of contact for this project in this office is Mr. Jose E. Gutierrez, Jr., P.E. He can be reached in one of the numbers listed above.

We thank you for this opportunity, and Felis Pasgua to all in Public Works.

Si Yuus Maase

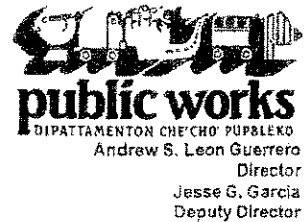
Juan C. Tenorio, P.E.
CEO/ Principal Engineer

Cc: J.E. Gutierrez
Enclosures: as stated.



The Honorable
Felix P. Camacho
 Governor

The Honorable
Michael W. Cruz, M.D.
 Lieutenant Governor



Andrew S. Leon Guerrero
 Director
 Jesse G. Garcia
 Deputy Director

Mr. Juan C. Tenorio, PE
 J. C. Tenorio Engineers & Associates, Inc.
 197 Hernan Cortes Avenue
 Hagatna, GU 96910

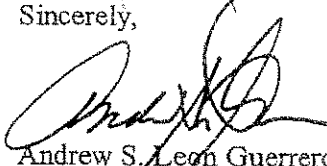
Ref: Laderan Tiyan Parkway

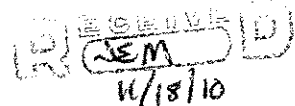
Dear Mr. Tenorio,

Some time ago, the Department of Public Works selected your firm to provide professional services related to detailed design of the Laderan Tiyan Parkway. While that project is not currently at the point of moving forward to detail design, it is anticipated that the project will continue to be developed with funding support from the Federal Highway Administration (FHWA).

We recently learned that your firm is debarred from undertaking new assignments with federal funding, and, with much regret, must inform you that our prior selection of your firm to provide professional services related to Laderan Tiyan Parkway is hereby rescinded.

Un Dankulu na Si Yu'us Ma'ase.
 Sincerely,

 11/18/10
 Andrew S. Leon Guerrero
 Director



Juan C Tenorio

From: Joey Patrick San Nicolas [sannicolaslaw@gmail.com]
Sent: Saturday, October 02, 2010 1:48 PM
To: Juan C Tenorio; Juan C Tenorio
Subject: Fwd: FW: Juan Tenorio

----- Forwarded message -----

From: **Phil Torres** <ptorres@tttguamlawyers.com>
Date: Sat, Oct 2, 2010 at 1:07 PM
Subject: RE: FW: Juan Tenorio
To: Joey Patrick San Nicolas <sannicolaslaw@gmail.com>

Mr. San Nicholas: Mr. Tenorio is still working with GIAA as a Construction Manager. His suspension on that work is prospective.

Sincerely yours,
Phillip Torres, Esq.
Teker Torres & Teker, P.C.
130 Aspinall Avenue, Suite 2A
Hagatna, Guam 96910
Telephone: (671) 477-9891-4
Facsimile No.: (671) 472-2601

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-----Original Message-----

From: Joey Patrick San Nicolas [mailto:sannicolaslaw@gmail.com]
Sent: Tuesday, September 28, 2010 9:51 AM
To: ptorres@tttguamlawyers.com
Cc: Juan C Tenorio; Juan C Tenorio
Subject: Re: FW: Juan Tenorio

Hafa Adai Phillip:

I understand that Mr. Tenorio has an existing contract with GIAA. I also understand that that contract was executed in 2009, a year before Mr. Tenorio's suspension from federal contracts.

We have taken the position that any existing contract must be completed, in spite of Mr. Tenorio's suspension. We believe that the EPA or any federal agency do not have the authority to unilaterally and retroactively suspend Mr. Tenorio's contracts with GovGuam or the Port. We feel that the suspension applies prospectively thereby prohibiting from any contracts from July 20, 2010 and beyond.

#3(B)

Please advise what your client's position is on this issue. Your reply is greatly appreciated.

Regards,

Joey

On Tue, Aug 31, 2010 at 4:54 PM, Phil Torres <ptorres@tttguamlawyers.com> wrote:
-----Original Message-----

From: Phil Torres [<mailto:ptorres@tttguamlawyers.com>]

Sent: Tuesday, August 31, 2010 4:43 PM

To: sannicholaslaw@gmail.com

Subject: Juan Tenorio

Joey: It was nice speaking to you this afternoon. As I relayed, My office is Conflicts Counsel for the Guam International Airport Authority. (GIAA). Mr. Tenorio has a contract with the GIAA on our runway expansion project and I need to understand the rights and liabilities of his continued employment with his current suspension. Hope your appeal goes well. As I requested could you send me copies of the plea agreement, the letter of suspension and the regulations you are appealing under.

Sincerely yours,

Phillip Torres, Esq.

Teker Torres & Teker, P.C.

130 Aspinall Avenue, Suite 2A

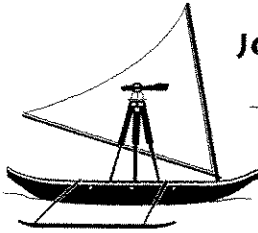
Hagatna, Guam 96910

Telephone: (671) 477-9891-4

Facsimile No.: (671) 472-2601

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Attorney at Law
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P.O. Box 506150
Saipan, MP 96950
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Facsimile: (670) 234-5777



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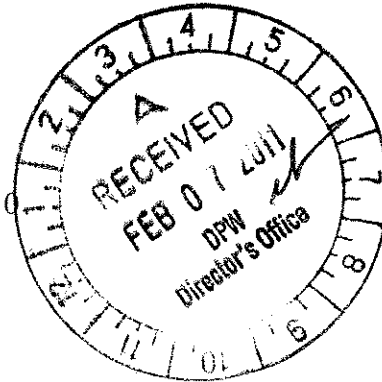


February 7, 2011

COPY

Ms. Joann S. Brown
 Acting Director
 Department of Public Works
 542 North Marine Corps Drive
 Tamuning, Guam 96913

Ref.: DPW Letter Dated November 18, 2010
 Subject: Laderan Tiyan Parkway Project



Hafa Adai, Ms. Brown:

First of all, I extend my congratulation to you on your appointment as Director of Public Works and wish you the best as you face the daunting tasks before you.

I am writing this letter to bring to your attention certain events and facts regarding the Laderan Tiyan Parkway Project. On March 14, 2007, we received a letter from then DPW Director Lawrence P. Perez that J. C. Tenorio Engineers & Associates, Inc. was selected to provide "Professional Engineering Services for the Feasibility Study and Design of the Laderan Tiyan Parkway". (Please see Attachment #1)

On November 18, 2010 we received a letter Mr. Andrew S. Leon Guerrero, former Director of Public Works, informing us that our selection was being rescinded because our firm was debarred from undertaking new assignments with federal funding. (Please see Attachment #2)

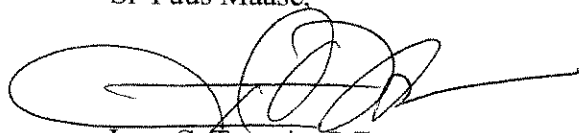
The debarment letter was issued by the USEPA and delivered by mail to our Saipan office on July 21, 2010, ostensibly since we had on-going USEPA-funded projects with the Commonwealth Utilities Corporation (CUC). I immediately sought advice from legal counsel. We retained Attorney J. P. San Nicolas for our legal counsel to help us determine the extent of the damages. Since we also had on-going project at the Guam International Airport (GIAA), Mr. San Nicolas communicated with GIAA's Conflict Counsel, Attorney Phil Torres regarding our status. Attorney Torres agreed with Mr. San Nicolas that our debarment/suspension was 'prospective', not to 'retroactive'. (Please see Attachment #3)

The strange thing about DPW's rescission of the 2007 letter is that on June 10, 2010, we received a letter from Mr. Leon Guerrero informing us of the selection of the firm to perform Professional Construction Management Services in conjunction with construction of the various highway projects. This letter was not rescinded; conceivably we can still be engaged by DPW for the stated services. (Please see Attachment #4)

It is my intention to pursue and assert our firm's right to this project. We understand that this same project has been advertized on your website beginning January 21, 2011. I hope we can reach a mutually satisfactory conclusion on this matter without having to put either ourselves or the government through any protracted legal processes.

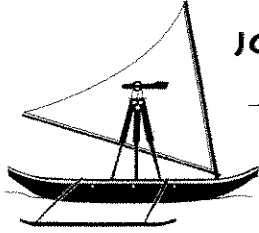
The point of contact is the undersigned; and I can be reached at any one of the numbers above.

Si Yuus Maase.



Juan C. Tenorio, P.E.
President

Attachment #1:	Letter from L P. Perez, dated March 14, 2007
Attachment #2:	Letter from A.S. Leon Guerrero, dated November 18, 2010
Attachment #3:	Email communication between Atty. San Nicolas and Atty. Torres
Attachment #4	Letter from A.S Leon Guerrero, dated June 10, 2010



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Email: tenorioengineers1@guam.net • Website: www.juancitenorio-engineers.com



February 17, 2011

Ms. Joann S. Brown
Acting Director
Department of Public Works
542 North Marine Corps Drive
Tamuning, Guam 96913

Subject: LETTER OF PROTEST re: RFP for PROFESSIONAL ENGINEERING SERVICES TIYAN
PARKWAY PHASE 1 GU-NH-00TP (002)

Hafa Adai, Ms. Brown:

This letter is to formally memorialize our firm's position to assert our rights regarding having been previously selected to perform the design work for this project. We are protesting the award of the design work for this RFP to any other firm besides ourselves.

We believe we are forced into this course of action because all of our previous efforts to engage DPW to work out a solution to this situation have not been fruitful; including our letter to you dated February 7, 2011.

It is our contention and belief that the design work for the Laderan Tiyan Parkway Project was awarded to us via a letter of selection dated March 14, 2007 authored by then DPW Director Lawrence P. Perez.

On November 18, 2010 we received a letter from DPW Director Andrew Leon Guerrero informing us that our selection was being rescinded because our firm was debarred from undertaking new assignments with federal funding.

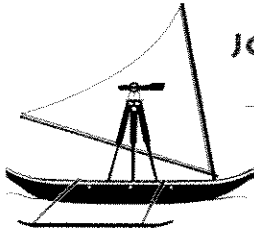
After receiving Director Leon Guerrero's letter we immediately sought advice from legal counsel. Our attorney J. P. San Nicolas communicated with GIAA's Conflict Counsel, Phil Torres, Esq. Attorney Torres to discuss the matter and Mr. Torres ended up agreeing with our attorney that our debarment/suspension was "prospective" and not "retroactive." Since our selection by Director Perez predated our debarment by several years, we believe that Director Leon Guerrero's letter of rescission is invalid and without force; not to mention totally lacking in due process. The only positive point raised by Director Leon Guerrero's letter was his acknowledgement that we were indeed selected to perform the work

As I stated before it is my intention to pursue and assert our firm's right to this project. Being that you possess the authority to resolve this issue, it is still our hope that we can reach a mutually satisfactory conclusion on this matter without having to put either ourselves or the government through a lengthy administrative and legal process; which would only serve to further delay completion of the project.

Should you have any questions, please not hesitate to contact me.

Si Yuus Maase,

JUAN C. TENORIO, P.E.
Principal In Charge
J.C. Tenorio Engineers and Associates, Inc.



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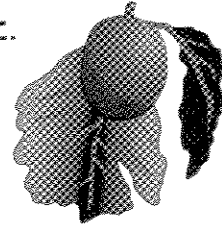
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Email: tenorioengineers1@guam.net • Website: www.juancatenorio-engineers.com



March 9, 2011

Mrs. Doris Flores Brooks
Public Auditor of Guam
Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

MAR 09 2011

TIME: 2:40PM BY: JH
FILE NO. OPA-PA: 11-006

TRANSMITTAL LETTER

Dear Mrs. Brooks:

Attached please find my firm's Procurement Appeal filing against the Department of Public Works.

I hope this filing contains all the necessary documents to begin our Procurement Appeal. Because we will be handling the appeal pro se we would appreciate any assistance you or your staff can provide regarding the completeness of our filing.

Should additional documents be required, please let me or Frank Lizama from my office know and we will cure the deficiency as soon as possible.

Thank you in advance for your assistance with this matter.

Si Yuus Maase,

JUAN C. TENORIO, P.E.
President/CEO

Attachments