

1 **GUAM DEPARTMENT OF EDUCATION**

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

JAN 10 2012
4:08 PM
FILE NO. 11-017

8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

9 **PROCUREMENT APPEAL**

10 IN THE APPEAL OF

APPEAL NO. OPA-PA-11-017

11 KIM BROS. CONSTRUCTION CORP.,

MOTION TO DISMISS

12 Appellant.

13 The Guam Department of Education (“GDOE”) hereby files this Motion to Dismiss this
14 Appeal on the basis that Appellant filed no protest and there is no decision from which an appeal
15 can be made. This motion is supported by the Memorandum of Points and Authorities below:

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 This matter is not properly on appeal before the Office of Public Accountability as no
18 protest was lodged by Kim Bros with GDOE and there is no decision from which an appeal may
19 be made. Attached to Kim Bros’ Notice of Appeal is a letter dated September 26, 2011 to the
20 GDOE Supply Management Administrator. In its letter, Appellant lists a timeline of events
21 regarding its communications with GDOE about the potential cancellation of IFB024-2011.
22 Appellant starts its letter with the phrase, “[t]his letter is to inform you that we are complaining
23 on *the way your office responded to the inquiries* of our company with regards to the above
24 subject project.” (Emphasis added.). Nowhere in the letter does it state that Kim Bros was
25 *protesting the handling of the IFB*. In fact, Appellant threatened to take the process on a path
26 for legal recourse by stating, “[s]hould GDOE ignore this letter, we will have no other recourse
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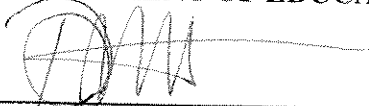
1 for legal recourse by stating, “[s]hould GDOE ignore this letter, we will have no other recourse
2 but to seek legal assistance and claim expenses incurred to include, among others, cost of
3 estimating, bid bond fee, attorney’s fee and other miscellaneous cost.” Appellant’s letter is not a
4 protest, but merely information that Appellant was unhappy with how GDOE handled its
5 inquiries. Additionally, if one were to rely on Appellant’s contention that Notice was not given to
6 it about the cancellation of IFB024-2011, upon actual notice that the IFB had been cancelled
7 (which one must assume Kim Bros had before filing this appeal), the first step required under
8 applicable procurement regulations would have been to file an appeal with GDOE (See generally
9 5 GAR §5425 which allows an aggrieved actual or prospective bidder to protest a procurement
10 decision to a procuring agency, then upon receipt of a decision from the agency, to appeal that
11 decision to the Public Auditor.) As Kim Bros filed no protest with GDOE, there is no decision by
12 the agency, and therefore no decision to be appealed to the Public Auditor. GDOE therefore
13 requests the OPA to dismiss the present appeal in its entirety on the basis that there is no agency
14 decision from which to hear an appeal.

15 For the reasons above, GDOE requests the OPA to find that this Appeal should be
16 dismissed in its entirety.

17 Dated this 10th day of January, 2012.

18 Respectfully submitted,

19 **GUAM DEPARTMENT OF EDUCATION**

20 
21 By: _____
22 **REBECCA M. PEREZ, ESQ.**
23 *Legal Counsel*