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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
MAY 21 2012  
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FILE NO. OPA-PA-12-010

4 *Attorney for Guam Department of Education*

5 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**  
6 **PROCUREMENT APPEAL**

7  
8 IN THE APPEAL OF  
9 ALLIED PACIFIC BUILDERS, INC.,  
10  
11 Appellant.

APPEAL NO. OPA-PA-12-010  
12  
13 **MOTION TO DISMISS IN PART**

14 Comes now the Guam Department of Education (“GDOE”) by and through its counsel  
15 and files this Motion to Dismiss in part on the basis that on May 18, 2012, Allied Pacific  
16 Builders, Inc. (“Appellant”) filed a Letter of Response and Comments on GDOE Motion to  
17 Dismiss dated April 27, 2012 for the Appeal OPA-PA-12-010 (hereinafter referred to as  
18 “Response Letter”) that contains matters that are not properly brought before the Office of Public  
19 Accountability (“OPA”). GDOE recognizes that the Motion cutoff date was May 16, 2012;  
20 however, the basis for this Motion to Dismiss was not apparent until GDOE was served with the  
21 Response Letter<sup>1</sup>. Furthermore, pursuant to 2 GAR § 12104(9), GDOE is promptly filing this  
22 Motion to Dismiss on the basis that GDOE objects to the OPA’s jurisdiction to entertain certain

23  
24 <sup>1</sup> The Response Letter contains mostly Comments to the Agency Report, which were due to the OPA on May 10,  
25 2012. Appellant was reminded about the May 10, 2012 deadline at the May 9, 2012 hearing and it is clearly posted  
26 on the OPA website. Only the statements that: Appellant filed the “appeal with the goal to clarify [GDOE’s] denial of  
27 the protest where it failed to provide more concise answer” and “we again assert that [the selected Contractors] do[]  
28 not have the certification to engage in this type of work...” relate directly to GDOE’s Motion to Dismiss filed on  
April 27, 2012, the remainder of statements are addressed herein.

1 of Appellant's claims contained in the Response Letter. Therefore, if OPA declines to grant  
2 GDOE's Motion to Dismiss filed on April 27, 2012, GDOE respectfully requests that the portions  
3 of the Response Letter discussed below are not considered by the OPA and be dismissed. This  
4 Motion to Dismiss is supported by the Memorandum of Points and Authorities below.

#### 5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 The Public Auditor's jurisdiction is limited to reviewing GDOE's April 3, 2012 letter  
7 denying Appellant's protest. 5 GCA § 5425(e). Therefore, if the issue was not raised in  
8 Appellant's initial protest letter sent to GDOE on January 5, 2012 (hereinafter referred to as  
9 "Protest Letter") or in GDOE's April 3, 2012 denial of Appellant's protest, the issue is not  
10 properly raised before the OPA because it is appearing for the first time on appeal and there is no  
11 decision from GDOE for the Public Auditor to review. *See also* Decision, Office of Public  
12 Accountability, OPA-PA-11-019, OPA-PA-11-020, OPA-PA-11-021, pp 11- 12 (Mar. 29, 2012).

13 Pages 3 and 4 of Appellant's Response Letters contain issues of protests that were not  
14 raised in the Protest Letter or in GDOE's April 3, 2012 response. Specifically, on the top of page  
15 3 of Appellant's Response Letter, Appellant states: "Also based on the submitted Agency Report  
16 winning bidder did not satisfy the requirements under Section 2.5.1-a Bidders experience on  
17 similar projects with similar scope of work." This information was never raised prior to this  
18 Appeal being filed at the OPA and could not have been raised since Appellant implies it had not  
19 seen the winning bid prior to the Agency Report being filed. Additionally, on the bottom of page  
20 3 and the example on page 4 of Appellant's Response Letter, the entirety of APB's Appeal  
21 relating to issue of Bid Price Basis, contains questions and an example that were not raised prior  
22 to this Appeal being filed with the OPA.

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**CONCLUSION**

In the event that the OPA determines not to dismiss this case on the basis in GDOE's Motion to Dismiss filed on April 27, 2012, GDOE respectfully requests that the OPA determine it has no jurisdiction to entertain certain parts of Appellant's Response Letter and therefore those issues be dismissed.

Dated this 21<sup>st</sup> day of May, 2012.

Respectfully submitted,

**GUAM DEPARTMENT OF EDUCATION**

By: Christina Pederson  
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*Legal Counsel*