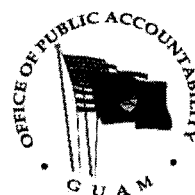


Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
		Pages:	12 (including cover page)
CC:	Joshua D. Walsh, Esq. (Attorney for ST Corporation) Civile & Tang, PLLC 330 Hernan Cortez Avenue Suite 200 Hagatna, Guam 96910 Phone: (671) 472-8868/9 Fax: (671) 477-2511	Date:	November 29, 2016
		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951

Re: OPA-PA-16-014 Notice of Receipt of Appeal

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 Jerrick Hernandez, Auditor
jhernandez@guamopa.com

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OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

November 29, 2016

Ms. Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
Department of Administration
148 Route 1 Marine Drive
Piti, Guam 96915

VIA FACSIMILE: (671) 475-1727

Re: Notice of Receipt of Appeal – OPA-PA-16-014

Dear Ms. Acfalle,

Please be advised that ST Corporation (ST Corp.) filed an appeal with the Office of Public Accountability (OPA) on November 28, 2016 regarding the General Services Agency's (GSA) response to ST Corp.'s protest relative to GSA Bid No. GSA-118-16; Janitorial and Hardware Supplies. OPA has assigned this appeal case number OPA-PA-16-014.

Immediate action is required of GSA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at www.opaguam.org. The notice of appeal filed with OPA is enclosed for your reference.

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

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Tuesday, December 6, 2016**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Wednesday, December 14, 2016**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to ST Corp. In addition, OPA respectfully asks that GSA provide one original and two copies of the procurement record and agency report as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208, or jhernandez@guamopa.com, should you have any questions regarding this notice.

Sincerely,



fr
Llewelyn Terlaje
Audit Supervisor

Enclosure: First nine pages of Notice of Appeal – OPA-PA-16-014

Cc: Joshua D. Walsh, Civile & Tang, PLLC, Attorney for ST Corp.



Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

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PROCUREMENT APPEALS

DATE: 11/28/16
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PART I- To be completed by OPA

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

PART II- Appellant Information

Name: ST Corporation
Mailing Address: P.O. Box 8530
Tamuning, Guam 96931
Business Address: 147 Duenas Street
Barrigada, Guam 96913
Email Address: cgmanager@stguam.com
Daytime Contact No: 671-637-7105
Fax No.: 671-637-7175

PART III- Appeal Information

- A) Purchasing Agency: General Services Agency
- B) Identification/Number of Procurement, Solicitation, or Contract: Bid No. GSA-118-16
- C) Decision being appealed was made on Nov. 14, 2016 (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:

Bids have not yet been submitted.

_____	_____
_____	_____
_____	_____
_____	_____

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.

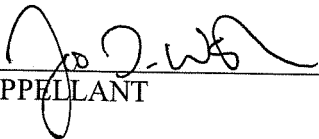
Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.

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

Submitted this 28th day of November, 2016.

By: 
APPELLANT

or

By: Joshua D. Walsh, Civile & Tang, PLLC
Appellant's Duly Authorized Representative
(Address) 330 Hernan Cortez Avenue, Ste. 200 Hagatna, Guam 96910
(Phone No.) 671-472-8868

CIVILLE & TANG, PLLC
SUITE 200, 330 HERNAN CORTEZ AVENUE
HAGĀTÑA, GUAM 96910
TELEPHONE: (671)472-8868
FACSIMILE: (671) 477-2511

*Attorneys for Appellant
ST Corporation*

**OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

In the Appeal of

ST Corporation,

Appellant.

Docket No. OPA-PA _____

**APPELLANT'S ADDITIONAL
INFORMATION SUBMITTED
PURSUANT TO NOTICE OF
APPEAL, APPENDIX A PART IV**

This submission is offered to supplement Appendix A: Notice of Appeal Form, Part IV.

I. STATEMENT OF GROUNDS FOR APPEAL

- A. The Seventh Amendment to the IFB substantially changed the nature of the products GSA sought to procure, and interested offerors such as ST Corporation were provided only four days to prepare appropriate bids.**

ST Corporation (“ST”) is an intended offeror who received and intended to respond to a bid pursuant to an Invitation for Bid (“IFB”) issued by the General Services Agency (“GSA”) and originally set for opening on October 28, 2016. IFB GSA 118-16, attached as **Exhibit A** to this Submission. The IFB sought proposals to provide GSA with various “Janitorial and Hardware supplies.” On October 24, 2016— four days before bid submission— the GSA issued an Amendment to the IFB that significantly altered the nature of the products that would be submitted under the IFB. *See* Amendment #7, attached as **Exhibit B** to this submission. That Amendment was received by ST on October 24, 2016 replacing pages 30-45 of the original IFB. “Amendment #7” substantially altered the nature of the IFB by requiring offerors, four (4) days

before bid submission, to provide products that individually “must be imprinted/embossed/watermarked with ‘Property of GovGuam.’” *See* Amendment # 7, attached as **Exhibit B** to this submission. This requirement did not exist previously. These significant changes altered the essential nature of the products that would be part of any bid response. These changes, by altering the nature of the products, also changed the practical delivery timelines for these products. GSA’s original bid expected a 30 day period between delivery and receipt of a purchase order. IFB, pg. 4, attached as **Exhibit A** to this Submission. The altered products—products that now need extensive embossing and watermarking and imprinting— require a different delivery period given the modifications laid down by the GSA on October 25, 2016.

ST submitted its protest because establishing pricing and product availability information four (4) days away from bid submission was an impossible task. *See* ST Procurement Protest, October 27, 2016, attached as **Exhibit C** to this Submission. This is especially true given the fact that “Amendment #7” neither allowed for any additional extension to the time for bid opening, nor allowed for an extended period to submit questions and concerns regarding the bid. ST Corporation is aggrieved by the fact it was expected, in the waning days of the bid preparation period, to prepare new product information and pricing in four (4) days, and was required to do so without being able to ask questions and gain clarity about the amendment’s requirements.

The truncated bid timing regime created by GSA’s issuance of “Amendment #7” violates Guam law. 2 GAR § 3109(d) provides that the minimum bidding time provided to an offeror like ST is fifteen (15) days from “the date of distribution” to the “time and date set for receipt of bids.” The regulations further require that “[i]n each case bidding time will be set to provide bidders a reasonable time to prepare their bids.” Again, “Amendment #7” raises significant

alterations to the nature of the original IFB that offerors must address, and four (4) days was simply not a reasonable bidding time.

Guam's procurement law exists to, *inter alia*, "provide for increased public confidence in the procedures followed in public procurement" and "to ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory." 5 GCA § 5001(b)(3);(4). The current state of GSA Bid No. GSA-118-16 fosters neither of these because of the exceedingly short period between the issuance of "Amendment #7" and the bid submission. Because of this failing, ST initiated a protest of the procurement. Further action along the timescale set by GSA called into question the fairness of the procurement process. ST, by the time "Amendment #7" was issued, had taken great care in preparing its existing tender and meeting the specific requirements of the IFB. Public confidence in the procurement process can only be kept through a procurement process that sets specific parameters for bids and reviews those bids against those preset and defined parameters. When those parameters significantly change, offerors must be afforded a reasonable opportunity to act accordingly. The process at work in the IFB— a process that mandated that ST prepare its bid in four (4) days in order to meet the requirements of "Amendment #7"— must be corrected.

B. GSA's denial of ST's protest ignores the timing and the nature of the Amendments GSA has issued in this procurement.

On November 14, 2016 the GSA's Chief Procurement Officer issued a Decision Denying ST's protest for three reasons. That Decision cited to an "Amendment #9" that extended the bid opening date to November 4th, 2016. *See* Memorandum Denying Protest, November 14, 2016, attached as **Exhibit D** to this submission.¹ The GSA also claimed that the "amendments change

¹ The GSA's protest decision incorrectly cites to "Amendment #9." A review of Amendments issued by the GSA shows that Amendment #8, which was received by ST on the same day ST's legal counsel submitted ST's protest changed the bid opening date from October 28, 2016 to November 4, 2016. *See* Amendment 8, attached as **Exhibit E** to this submission.

of pages 30-45 did not change the specifications issued originally. What the amendment did was to change the amount requested in this bid, by either increasing or decreasing the amount.” *Id.* The GSA also claimed in its denial that the requirement of imprinting “Property of GovGuam” was a requirement stated (sic) in the beginning of the bid and is being stated as a reminder.” *Id.* The GSA’s reasons for denying the protest are unavailing.

First, even if the GSA Amended the IFB to extend the date for the opening of bids to November 4, 2016, that Amendment was sent to ST contemporaneously with the submission of ST’s agency level protest and did not alter the basis of ST’s protest, *i.e.*, that the time for bid preparation given the significant changes of Amendment #7 was insufficient. The GSA explained that the period for bid preparation was “Clearly more than four days.” *Id.* ST’s protest was not based on needing more than four days, but, instead, that the period provided was not long enough and, in any event, shorter than the 15 day minimum period mandated by Guam law.

Second, the GSA seems to confuse Amendment 8 with Amendment 7. The GSA claims that the changes to pages 30-45 that ST protests simply changed quantity. Amendment 8 to the IFB did change quantities. However, ST did not raise a protest of Amendment 8, and the GSA has failed to grasp this. ST’s protest of October 27, 2016 was of Amendment 7’s significant change modifying the 78 different products contained in the IFB to include an individual requirement for imprinting/embossing/watermarking of the phrase “Property of GovGuam.” *Compare, e.g.* Sanitary Napkin item description on pg. 42 of original IFB *with* Sanitary Napkin item description pg. 42 change of Amendment #7 (adding requirement that “Each napkin must be imprinted/embossed/watermarked with ‘Property of GovGuam.’”)

Finally, the GSA claims that the inclusion of the phrase “Property of GovGuam” was part of the original IFB. This is simply not the case. While the original IFB did include, for some

products, that the phrase “Property of GovGuam” be imprinted, Amendment 7 significantly altered that by greatly increasing the scale of that imprinting. For instance, the GSA’s original IFB request for toilet tissue wanted each “roll” to have an imprint “Property of GovGuam,” but Amendment 7 mandated that each “sheet” be “imprinted/embossed/watermarked” with the GovGuam name. *Compare*, Toilet Tissue item description on pg. 43 of original IFB *with* Toilet Tissue item description pg. 43 change of Amendment #7. This is no minor modification, and with four days left in the bid preparation period, it significantly changed the nature of the bid that ST was preparing to respond to.² More, that Amendment was issued without a period to allow clarity and questions about the new amendment.

C. The GSA is also violating procurement law by ignoring the Automatic Stay mandated by 5 GCA § 5425(g)

The GSA has also ignored procurement law during its handling of the instant IFB by ignoring the Automatic Stay regarding the continued procurement of GSA-118-16. Pursuant to 5 GCA § 5425(g), the Territory shall not proceed further with the solicitation or with the award of the contract prior to final resolution of this protest. Despite this, the GSA has chosen to move forward with the Procurement and make further Amendments to the IFB. On November 16, 2016 the GSA received from ST’s counsel a letter reminding the agency that, despite the agency level denial of ST Corporation’s (“ST”) protest, the automatic stay triggered by the filing of that protest remains in effect. Despite this, the General Services Agency issued a notice to all prospective bidders that “that the stay of procurement has been lifted...” The GSA then went on to issue another Amendment to the bid. *See* Notice Lifting Stay of Procurement, November 16,

² Moving from simply marking a roll of toilet tissue to embossing each sheet of that roll of toilet tissue is a significant undertaking, and requires careful work with supply chains to develop and create appropriate product molds that create the embossing or watermarking required. Establishing such a mold can take four weeks. Simply putting a GovGuam sticker on each sheet of toilet tissue is, as one can understand, not a viable option.

2016, attached as **Exhibit F** to this Submission; Amendment #9, attached as **Exhibit G** to this Submission.

The GSA's lifting of the stay of procurement on November 16 is wholly outside established law, and must be immediately corrected. The Office of Public Accountability has been clear that "the automatic stay is triggered upon the filing of a timely protest; the filing of a timely appeal to the OPA; and the filing of a timely appeal to the Superior Court of Guam. In the event of a timely protest... the Territory shall not proceed further with the solicitation of with the award of the contract prior to its final resolution. Final resolution of a protest includes the time period of an appeal after protest." Order Granting Motion Re Automatic Stay, *In the Appeal of JMI Edison*, OPA-PA-13-010. The Guam Supreme Court confirmed this interpretation of the law. *See Teleguam Holdings, LLC v. Territory of Guam*, 2015 Guam 13.

While GSA's denial of the ST's protest recognized the right for ST to seek administrative and judicial review, GSA nevertheless moved forward with ignoring the law of the automatic stay. This is untenable, and The OPA should preserve the integrity of the procurement process, and Confirm that the automatic stay mandated by 5 GCA §5425(g) is in place, and that the Territory shall not proceed further with the solicitation of GSA-118-16 pending final resolution of the instant protest and appeal.

II. RULING REQUESTED

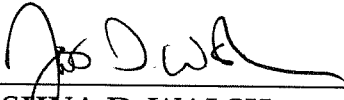
ST requests that the OPA direct the GSA to allow for a 10 day Question and Answer period for potential offerors to address Amendment #7, and then to direct that Bid opening occur 30 days after that. ST further requests a determination by the OPA that a 50 day delivery period be put in place for all "imprinted/embossed/watermarked" items purchased under this procurement.

III. SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS

ST anticipates providing further documentation to substantiate its claims when GSA submits the procurement record to the OPA and its agency report.

Submitted this 28th day of November, 2016.

CIVILLE & TANG, PLLC

By: 

JOSHUA D. WALSH
JOSEPH C. RAZZANO
Attorneys for Appellant
ST Corporation

VERIFICATION

Broadcast Report

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FAX

To:	Ms. Claudia S. Aefalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
		Pages:	12 (including cover page)
CC:	Joshua D. Walsh, Esq. (Attorney for ST Corporation) Civile & Tang, PLLC 330 Herman Cortez Avenue Suite 200 Hagatna, Guam 96910 Phone: (671) 472-8868/9 Fax: (671) 477-2511	Date:	November 29, 2016
		Phone:	(671) 475-0390 x. 208
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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.cnm

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003	122	671-477-2511	02:20:17 p.m. 11-29-2016	00:02:50	12/12	1	EC	HS	CP21600