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RE: OPA-PA-24-005 In the Appeal of Pacific Federal Management, Inc.

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Hafa Adai,

Please see the attached Proposed Findings and Brief on Remedies for filing.

Kind regards,

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2 attachments **Remedies Brief.pdf**
134K **Proposed FFCL.pdf**
189K

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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

In the Appeal of

APPEAL CASE NO.: OPA-PA-24-005

**PACIFIC FEDERAL MANAGEMENT
INC.,**

BRIEF ON REMEDIES

Appellant.

ARRIOLA LAW FIRM HAGÁTÑA, GUAM 96910

COMES NOW, ARRIOLA LAW FIRM, LLC through the undersigned counsel, and on behalf of the A.B. Won Pat Guam International Airport Authority (“GIAA”), to submit GIAA’s Brief on Remedies in this matter. GIAA, as more fully set out in its Agency Report and Statement, its Hearing Brief and its Proposed Findings of Fact and Conclusions of Law maintains that PFM’s appeal should be dismissed for lack of subject matter jurisdiction and because PFM’s claims in this appeal are meritless. However, should the Public Auditor determine that PFM’s claims entitle it to relief under the Guam Procurement law and Regulations, GIAA submits its position on remedies.

GIAA’S POSITION ON REMEDIES

i. PFM is not entitled to an award.

At the protest level PFM requested that GIAA find that it “submitted proof of all necessary CLB licenses with its bid, find that PFM was the lowest responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids under 5 G.C.A § 5211(g), and award the contract to

PFM.” Notice of Appeal, Ex. 2, PFM Protest at p. 6 (Oct. 29, 2024). On appeal, PFM now seeks a review of the procurement and award to the responsive and responsible bidder with the lowest bid price. Id. at pp. 10-11.

Under Guam law, the Public Auditor is empowered in a procurement appeal to “determine whether a decision on the protest of method of selection, solicitation or award of a contract, or entitlement to costs is in accordance with the statutes, regulations, and the terms and conditions of the solicitation.” 2 GAR, Div. 4 § 12112. If “prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be cancelled; or revised to comply with the law.” 5 G.C.A. § 5451.

The right to protest inures to the bidder who is aggrieved in connection with the method of source selection, solicitation or award. 5 G.C.A. § 5425(a). The right to protest does not allow a bidder to advance the claims of other bidders. See Pac. Data Sys. v. Guam Dep’t of Educ., 2024 Guam 4 ¶ 22. This is because each and every claim raised in a procurement protest and appeal is subject to the procurement law’s jurisdictional timelines and administrative exhaustion requirements. See Pac. Data Sys., Inc. v. Guam Dep’t of Educ., 2024 Guam 4 ¶ 22 (citing DFS Guam L.P. v. A.B. Won Pat International Airport Authority, 2020 Guam 20 ¶ 66). An aggrieved bidder cannot circumvent these requirements by relying on claims raised by other bidders.

Surface Solutions submitted a bid with a lower price than PFM. Like PFM, Surface Solutions holds GCLB A and B licenses and unlike PFM some C Licenses. However, Surface Solutions did not submit proof it holds all required C classification GCLB licenses with its bid. Surface Solutions’ bid was rejected despite submitting the lowest dollar amount bid in response to the IFB due to the lack of the required GCLB licenses. If PFM prevails in its argument that GIAA should not have required specific licensure at the time of bid opening, it does not appear PFM would be entitled to an award

related to this procurement. If PFM prevails based on its argument that as an A and B licensee it did not need specialty C-licenses, then Surface Solutions similarly submitted proof of A and B licensure, and certain C-licenses. Thus, PFM would not be entitled to an award even if its arguments were deemed to have merit.

Then, because Surface Solutions did not timely protest the rejection of its bid, Surface Solutions has no independent basis to seek relief related to the procurement and GIAA's rejection of its bid as non-responsive. Put differently, the Public Auditor cannot order an award to PFM or to Surface Solutions based on the state of the record. PFM because it was not the responsive bidder who submitted the lowest bid and because the Public Auditor lacks jurisdiction to grant relief to Surface Solutions.

Thus, the PFM's requested remedies in its protest and hearing brief are not available to the Public Auditor and this Appeal should be dismissed.

ii. **The Public Auditor does not have jurisdiction over Surface Solutions' request for an Order cancelling the procurement and directing GIAA to re-issue the procurement.**

In its Hearing Brief, Surface Solutions requests that the entire procurement be cancelled and reissued. Surface Solutions' Hearing Br. (Jan. 15, 2025). Surface Solutions did not timely seek relief under the procurement protest and appeal scheme, nor cancellation of the procurement at the agency level. As discussed in the authorities cited herein and in GIAA's Hearing Brief and Proposed Findings of Fact and Conclusions of Law, a timely protest is a jurisdictional requirement to each and every claim raised by a party in a procurement protest and appeal. Because Surface Solutions did not protest at the agency level, the Public Auditor cannot enter any relief in favor of Surface Solutions and cannot grant Surface Solutions' request to cancel and direct GIAA to reissue the procurement. Therefore, insofar as Surface Solutions has tried to bootstrap its request for relief to PFM's untimely appeal, this appeal must be dismissed.

CONCLUSION

Based on the foregoing, GIAA submits that the remedies sought by PFM and Surface Solutions should be denied. This Appeal should be dismissed.

Dated: February 21, 2025, at Hagatna, Guam.

Respectfully submitted,
ARRIOLA LAW FIRM, LLC

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