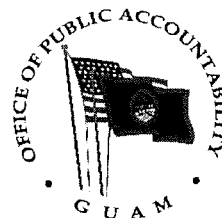


Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Jay Rojas Administrator Guam Economic Development Authority ITC Building, Suite 511 590 South Marine Corps Drive Tamuning, Guam 96931	From:	Doris Flores Brooks Public Auditor Office of Public Accountability
Phone: Fax:	(671) 647-4332 (671) 649-4146	Pages:	6 (including cover page)
CC:	Jon A. Visosky, Esq. Roberts Fowler & Visosky LLP Attorney for Appellant Mega United Corp. Ltd. 865 South Marine Corps. Drive, Suite 201 Tamuning, Guam 96913	Date:	June 16, 2017
Phone: Fax:	(671) 646-1222 (671) 646-1223	Phone: Fax:	475-0390 x. 208 472-7951

Re: OPA-PA-17-007 Notice of Receipt of Appeal

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Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
 Jerrick Hernandez
 Auditor
jhernandez@guamopa.org

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

June 16, 2017

Jay Rojas
Administrator
Guam Economic Development Authority
ITC Building, Suite 511
590 South Marine Corps Drive
Tamuning, Guam 96931

Re: Notice of Receipt of Appeal – OPA-PA-17-007

Dear Mr. Rojas,

Please be advised that Mega United Corp. Ltd. (“Mega United”) filed an appeal with the Office of Public Accountability (OPA) on June 15, 2017 regarding the Guam Economic Development Authority’s (GEDA) denial to Mega United’s demand for a final decision on its Request for Adjustment of Contract Price due to Prolonged Delay related to GEDA Invitation for Bid No. 14-002 for the Construction of the Farmers’ Cooperative Association of Guam Facility and the Relocation of the Dededo Flea Market. OPA has assigned this appeal case number OPA-PA-17-**007**.

Immediate action is required of GEDA 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 **Friday, June 23, 2017**, 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 **Friday, June 30, 2017**, 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 ABE. In addition, OPA respectfully asks that the Legislature 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 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,



 Rodaly Gerardo
Audit Supervisor

Enclosure: First Three Pages of Notice of Appeal – OPA-PA-17-007

Cc: Jon A. Visosky, Esq., Attorney for Mega United

Jon A. Visosky, Esq.
ROBERTS FOWLER & VISOSKY LLP
865 South Marine Corps Drive, Suite 201
Tamuning, Guam 96913
Tel.: (671) 646-1222
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visosky@guamlawoffice.com

Attorneys for Appellant
Mega United Corp. Ltd.

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of
Mega United Corp. Ltd.,

Appellant.

Docket No. OPA-PA 17-007

Notice of Appeal

Appellant Information:

Mega United Corp. Ltd. ("Mega United")
C/O: Mr. Zhang Zumin
P.O. Box 8620
Tamuning, Guam 96931
Tel.: 689-3293
Fax: 734-0098

RECEIVED
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PROCUREMENT APPEALS
DATE: 06-15-17
TIME: 8:50 AM PM BY: JW
FILE NO OPA-PA: 17-007

Appeal Information:

- A) Purchasing Agency: Guam Economic Development Authority ("GEDA").
- B) Contract By and Between Mega United Corp., Ltd. and Guam Economic Development Authority, for the Construction of the Farmers' Cooperative Association of Guam Facility and the Relocation of the Dededo Flea Market (GEDA Invitation for Bid No. 14-002 for the Construction of the Farmers' Cooperative Association of Guam Facility and the Relocation of the Dededo Flea Market).
- C) Decision being appealed is the GEDA April 10, 2017 (received by Mega United April 17, 2017) denial of Mega United's demand for a final decision on its Request for Adjustment of Contract Price due to Prolonged Delay.
- D) Decision on Contract or Breach of Contract Controversy
(Excluding claims of money owed to or by the government)
- E) Names of Competing Bidders, Offerors, or Contractors known to Appellant: None.

Form and Filing:

1. On or around May 1, 2014 the Governor approved the Contract By and Between Mega United Corp., Ltd. and Guam Economic Development Authority, for the Construction of the Farmers' Cooperative Association of Guam Facility and the Relocation of the Dededo Flea Market (the "Contract"). The Contract is attached as **Exhibit 1**.

2. Under the Project Manual for Farmers' Co-Op & Dededo Flea Market Relocation, (the "Project Manual") for example, Mega United "shall be permitted an adjustment in the Contract Price only if any delays either individually or cumulatively, cause the Contract Time to be increased by more than sixty (60) days." Project Manual Vol. I: 0700-49, section 12.F.3 (underline added). The Project Manual Vol. I is attached as **Exhibit 2**. See also Contract Articles 11 and 12.

3. Delays caused by GEDA or its representative Program Management Office ("PMO") increased the Contract Time by more than sixty (60) days, resulting in damages to Mega United of over \$460,081 plus attorney's fees and interest. See correspondence between Mega United and its attorneys, and GEDA and its attorneys, attached as **Exhibit 3**.

4. Some of GEDA's and it's PMO's acts and omissions causing the delays include:

a. Design Deficiency. The public water system could not handle the Guam Fire Department water flow requirements in the project area. GEDA was aware of this deficiency but failed to address the issue, thereby forcing Mega United to shoulder the resulting permitting delays.

b. Leadership Dispute within the Board of Farmers' Co-Op. A Board of Farmers Co-Op leadership dispute resulted in indecisions by GEDA concerning which critical options should be exercised for actual construction. This dispute had to be brought to the Superior Court of Guam for a final judgment. Mega United Corp. again had to shoulder all damages caused by the delay.

c. The Poor Performance of GEDA's PMO. CHA Company, retained by GEDA as the PMO, initially subcontracted TCM to handle the project. CHA Company terminated TCM's subcontract in February of 2014 and assigned its own engineer Galvin Thomas to the project. After delays resulting from the additional time necessary for Mr. Thomas to familiarize himself with the project, Mr. Thomas then overruled all previous arrangement made between TCM and Mega United Corp., demanding new terms from Mega United.

5. On April 17, 2017, counsel for Mega United received GEDA's response to Mega United's request for a final decision. GEDA denied Mega United's request, based on GEDA's failure to respond previously, arguing that GEDA's failure to communicate in any way constituted notice to Mega United that it's request had been denied, and that Mega United's right to appeal to the Public Auditor was barred. Mega United's demand for a final decision, and GEDA's response is attached as **Exhibit 4**.

6. Mega United requests that the Office of Public Accountability approve Mega United's Request for Adjustment of Contract Price due to Prolonged Delay in the amount of \$460,081, in addition to attorney's fees and interest.


7. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for the appeal, are attached and referenced above.

Declaration regarding court action:

Pursuant to 5 GCA Chapter 5, Mega United confirms that no case or action concerning the subject of this Appeal has been commenced in court.

Roberts Fowler & Visosky LLP

Date: June 15, 2017

By: 


Jon A. Visosky
Attorneys for Mega United Corp. Ltd.

Verification

I, declare under penalty of perjury under the laws of Guam that I have read the foregoing Notice of Appeal and that it is true and correct of my own knowledge, except as to those matters alleged upon information and belief and as to those matters, I believe them to be true.

Roberts Fowler & Visosky LLP

Date: June 15, 2017

By: 

Jon A. Visosky
Attorneys for Mega United Corp. Ltd.

Broadcast Report

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002	593	6716461223	11:12:15 a.m. 06-16-2017	00:01:15	6/6	1	EC	HS	CP26400

Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	CP: Completed	TS: Terminated by system
HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TU: Terminated by user	EC: Error Correct