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FAX

To:	Ms. Emily G. Gumataotao Supply Management Administrator University of Guam UOG Station Mangilao, Guam 96923 Phone: (671) 735-2925 Fax: (671) 735-3010 Email: eggumataotao@triton.uog.edu ; uog.bids@triton.uog.edu	From:	Joseph B. McDonald, Esq. Hearing Officer Office of Public Accountability
	Mr. Anthony R. Camacho, Esq. Legal Counsel University of Guam UOG Station Mangilao, Guam 96923 Email: arcamacho@triton.uog.edu	Pages:	6 (including cover page)
CC:	Mr. Sedfrey Linsangan President Guam Pacific Enterprise, Inc. Phone: (671) 649-6994/7/8 Email: guampacific@gmail.com	Date:	January 21, 2022
		Phone:	(671) 475-0390 x. 204
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Re: OPA-PA-21-011 Decision and Order

- For Review**
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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com



**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

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7 In the Appeal of) **Appeal No: OPA-PA-21-011**
8 Guam Pacific Enterprise, Inc.,) **DECISION AND ORDER**
9 Appellant.)
10 _____)

11 **To: Purchasing Agency:**
12 University of Guam
13 C/O Anthony R. Camacho, Esq.
14 Legal Counsel
15 UOG Station
16 Mangilao, Guam, 96923
17 Phone: (671) 735-2925
18 Fax: (671) 735-3010
19 Email: arcamacho@triton.uog.edu

20 **Appellant:**
21 Guam Pacific Enterprise, Inc.
22 C/O Sedfrey Linsangan
23 President
24 Phone: (671) 649-6994/7/8
25 Email: guampacific@gmail.com

26 This is the Office of Public Accountability's ("OPA's") dismissal of Guam Pacific
27 Enterprises, Inc.'s ("GPE's") appeal of the University of Guam's ("UOG's") Oct. 18, 2021
28 decision denying GPE's protest of UOG-IFB-21-10 (Air Purifier System and Replacement
Filters). This dismissal is with prejudice.

The genesis of GPE's appeal here was OPA-PA-21-006. In that appeal, UOG moved to
dismiss because no protest decision had been made. The OPA thus ordered that appeal be
dismissed without prejudice so that, UOG could issue a protest decision. UOG did so, denying
GPE's protest in an Oct. 18, 2021 letter from its president, which is the subject of this appeal.

1 **Prosecution of this appeal *In Propia Personum***

2 In its reply to GPE’s opposition to its motion to dismiss, UOG for the first time raised
3 that this appeal is improper because GPE prosecutes it through its President, Mr. Sedfrey
4 Linsangan, who is not an attorney licensed to practice in Guam. No aggrieved person or
5 purchasing agency has ever made this argument in an appeal to the OPA.
6

7 **Discussion**

8 UOG takes the position that, as GPE’s pleadings, arguments and representation have been
9 brought by a non-lawyer, its appeal is not properly before the OPA and must be dismissed. GPE
10 observes that it and other appellants have represented their organizations at appeal to the OPA in
11 the past. While such may be the case, the issue of corporate representation *In Propia Personum*
12 has not previously been analyzed in an appeal to the OPA. The OPA must exercise jurisdiction
13 to protect the integrity of the procurement process and the purposes of the Procurement Law.
14

15 5 GCA § 5703 (f). The purposes and policies of the Procurement Law are as follows:

16 (1) to simplify, clarify, and modernize the law governing procurement by this
17 Territory; (2) to permit the continued development of procurement policies and
18 practices; (3) to provide for increased public confidence in the procedures followed
19 in public procurement; (4) to ensure the fair and equitable treatment of all persons
20 who deal with the procurement system of this Territory; (5) to provide increased
21 economy in territorial activities and to maximize to the fullest extent practicable
the purchasing value of public funds of the Territory; (6) to foster effective broad-
based competition within the free enterprise system; (7) to provide safeguards for
the maintenance of a procurement system of quality and integrity; and (8) to require
public access to all aspects of procurement consistent with the sealed bid procedure
and the integrity of the procurement process.

22 5 GCA § 5001 (b).

23 Mr. Linsangan provided that he has the controlling interest in GPE, which is organized as
24 a corporation. As president, he has signed pleadings, made arguments and represents GPE’s
25 interests in this appeal. Such constitutes the practice of law under 7 GCA § 9A215 (b) (3).
26

27 UOG argues that Mr. Linsangan’s unlicensed practice of law (“UPL”) is unlawful under
28 7 GCA §§ 9A106 and 9A215 (d) and that, there is no exception available to him under 7 GCA

1 § 9A215 (c). UOG further argues that, while § 9A215 (c) (13) provides an exception to UPL for
2 a bona fide fulltime employee, officer or director of a corporation to represent it before an
3 agency, the OPA is not an agency for the purposes of the statutory provisions for the Regulations
4 of Attorneys, 7 GCA § 9101 *et seq.*, or for the purposes of the Guam Integrated Bar Act, 7 GCA
5 § 9A101 *et seq.*, but is an instrumentality, as given by the OPA’s enabling act. *See* 1 GCA
6 § 1900. While agencies may or may not be instrumentalities, there is no escaping that
7 designation as an instrumentality is a distinction sufficient to have legal significance, *e.g.*,
8 *Bordallo v. Reyes*, 763 F.2d 1098 (9th Cir. 1985), and GPE in its brief acknowledges that the
9 OPA is an instrumentality of significant independence from other components of territorial
10 government.
11

12 A non-natural person such as a corporation is required to have a licensed attorney
13 represent it. *Rowland v. California Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S.
14 194, 201-202 (1993). Unlicensed persons are barred from bringing matters to adjudication
15 where no exceptions exist that would allow representation *In Propria Personum*. *In re Am. W.*
16 *Airlines*, 40 F.3d 1058 (9th Cir. 1994). “The Public Auditor shall have the power to review and
17 determine *de novo* any matter properly submitted to her or him.” 5 GCA § 5703 (a). Whether an
18 appeal is properly before the OPA is an issue of subject matter jurisdiction, which may be raised
19 at any time, even on appeal to the Guam Supreme Court. *Teleguam Holdings LLC v. Territory of*
20 *Guam*, 2018 Guam 5 ¶¶ 21-11; *see also DFS Guam LP v. A.B. Won Pat Int’l Airport Auth.*,
21 *Guam*, 2020 Guam 20 ¶ 66. From the foregoing, the OPA has no subject matter jurisdiction
22 where an appeal is brought *In Propria Personum* for a corporation.
23
24

25 “[A]n aggrieved bidder must raise known defects in the solicitation process during the
26 administrative review phase” *DFS Guam LP v. A.B. Won Pat Int’l Airport Auth.*, 2020
27 Guam 20 ¶ 74. As GPE had 15 days from the denial of its protest to bring its appeal to the OPA,
28 5 GCA § 5425 (e), even if GPE were now to obtain counsel to pursue this appeal, such filing

1 would be untimely. Where a cause of action has been improperly brought without representation
2 of counsel, dismissal with prejudice is appropriate where there is no cure available. *See Wash.*
3 *D.C., Seattle Mfg., Inc. v. Dept. of Public Health and Social Serv.*, 2020 WL 6532817 (D.C.
4 Guam 2020). Dismissal of this appeal with prejudice is, therefore, appropriate.

5
6 In this matter, the OPA exercises jurisdiction to further the purpose of simplifying,
7 clarifying and modernizing the law governing procurement by determining that a person without
8 a license to practice law in Guam may not represent a corporation or other business entity that is
9 formally organized under Guam's laws. By having a licensed attorney represent formally
10 organized entities, the OPA implements a policy that helps ensure the fair and equitable
11 treatment of all persons who deal with Guam's procurement system, increases economy in
12 territorial activities and provides safeguards for maintenance of a procurement system of quality
13 and integrity.

14 **Conclusion**

15
16 Accordingly, IT IS HERBY ORDERED that the above referenced case number be
17 DISMISSED WITH PREJUDICE. The Hearing Re Appellant's Appeal scheduled for January
18 24, 2022 at 9:00 a.m., is hereby VACATED. Each party shall bear their own attorneys' fees and
19 costs.

20
21 This is a Final Administrative Decision for Appeal No. OPA-PA-21-011. The Parties are
22 hereby informed of their right to appeal the Hearing Officer's Decision to the Superior Court of
23 Guam in accordance with Part D of Article 9 of 5 G.C.A. §5481(a) within fourteen (14) days
24 after receipt of a Final Administrative Decision.

25 ///

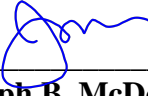
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1 A copy of this Decision shall be provided to the Parties and their respective attorneys, in
2 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA website at
3 www.opaguam.org.

4 SO ORDERED this 21 day of January 2022 by:

5
6
7 
8 _____
9 **Joseph B. McDonald, Esq.**
10 **Hearing Officer**



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-21-011 Decision and Order

Jerrick Hernandez <jhernandez@guamopa.com>

Fri, Jan 21, 2022 at 11:19 AM

To: GPE INC <guampacific@gmail.com>, "Camacho, Anthony" <arcamacho@triton.uog.edu>

Cc: Vince Duenas <vduenas@guamopa.com>, UOG Procurement Bids <uog.bids@triton.uog.edu>, "Gumataotao, Emily" <eggumataotao@triton.uog.edu>

Hafa Adai,

Please see attached Decision and Order for OPA-PA-21-011. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA

Auditor

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