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IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

IN THE APPEAL OF: **CARDON PACIFIC CORPORATION** **Appellant.**	DOCKET NO. OPA-PA-25-009 **PURCHASE AGENCY AGENCY STATEMENT**

COMES Now, the Mayor's Council of Guam ("MCOG") by and through its counsel and files its Agency Statement pursuant to 2 GAR § 12105(g) in response to the appeal by Cardona Pacific Corporation, ("Cardona") protesting the Solicitation No. IFB No. MCOG-25-002 ("IFB").

RELEVANT BACKGROUND

A. MCOG SOLICITS BIDS FOR IFB MCOG-25-002, ARTICULATING COLLECTION, TRANSPORTATION AND DISPOSAL OF ABANDONED VEHICLES (Tab "4"). Five (5) bidders, expressed interest in the IFB, and all five

(5) submitted bids in response to the IFB. Bid Abstract, July 7, 2025 (Tab "15"). Prior to submissions of the bids, the bidders has an opportunity to submit questions regarding the IFB (Tab "8").

On July 7, 2025, the bids were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of Bids which lists the five (5) bids submitted.

1. UMS Heavy Equipment Rental
2. Cardona Pacific Corporation
3. Big Ben & Company
4. Guahan Waste Control, Inc, dba: Mr. Rubbishman
5. Buena Vista Environmental, LLC.

5 GCA § 5211(g) provides that "Award. The contract shall be awarded with reasonable promptness to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids ..." as cited in Pacific Data Systems, Inc. vs. General Services Agency, OPA-PA 15-012. In the Appeal of I-A Guam WEBZ, OPA-PA 16-002 also addresses the issue of bid evaluation and stated that "the invitation for bids shall set forth the evaluation criteria to be used and no criteria may be used in bid evaluation that are not set forth in the invitation for bids." 5 GCA §5211(e) and 2 GAR, Div. 4, Chap. 3, §3109(a)(1).

Procurement law requires that MCOG award to the lowest responsible and responsive bidder. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bids. 5 GCA § 5201(g) and 2 GAR, Div. 4, Chap 3,§ 3109(a)(2).

Cardona's appeal stayed the procurement. Prior to MCOG's stay, it had properly issued a July 31, 2025 Intent to Award contract to Buena Vista Environmental, LLC as the lowest responsible and responsive bidder. The bid was evaluated and awarded based on the bid specifications and evaluation criteria.

B. THE CARDONA BID PROTEST WAS IMPROPER AND THE OPA HAS NO JURISDICTION TO CONSIDER A PROCUREMENT APPEAL.

5 GCA § 5425(a) allows bidders who "may be aggrieved in connection with the method of source selection. solicitation, or award of a contract" to appeal to the OPA. An aggrieved individual must submit a written protest within fourteen (14) days after such aggrieved individual knows or should know the facts giving rise thereto. 5 GCA § 5425(a). A timely protest is a jurisdictional requirement of the procurement protest process in Guam procurement law. Telegram Holdings, LLC v. Guam, 2018 Guam 5, § 20-21, DFS Guam L.P., 20 20 Guam 20 §77, §81-87 ("a protest filed more than 14 days after the disappointed offeror or bidder had notice of the grounds for the protest is banned as untimely. DFS Guam L.P., 2020 Guam 20 §87. In Pac. Data Sys. v. Guam Dep't of Educ., 2004 Guam 4 § 4, the Guam Supreme Court found that without a timely protest, the OPA has no jurisdiction to consider a procurement appeal. Here, Cardona disregarded its legal requirement to file a protest. Instead, it filed an appeal with the OPA. Having disregarded the procurement law its appeal is improper.

On June 4, 2025 the MCOG issued an Invitation for Bid IFB No. MCOG-25-002. The Special Reminder to Prospective Bidders, signed by Cardona on July 6, 2025, indicates that there are two (2) acceptable options for the bid guarantee (15% of bid amount), and they are (a) a Cashier's Certified Check or (b) Surety Bond. Cardona

acknowledged that it received the bid specifications, and again when its President signed the Special Reminder to Prospective Bidders on July 6, 2025 it was aware of the bid specifications requiring a Cashier's Certified Check or a Surety Bond. Cardona again had an opportunity to seek clarification as to those requirements during the question and comment phase. No questions were raised by Cardona as to how the bid bond/security could be submitted. The MCOG 's evaluation determined that Cardona did not comply with the required bid bond amount. The total bid bond amount should have been $20,699.13. Cardona had several opportunities to ensure the accuracy and Cardona's legal counsel filed a protest on its behalf on or about August 14, 2025, which is untimely and deprives the OPA of jurisdiction.

CONCLUSION

The MCOG requests that the OPA find that Cardona's appeal is a frivolous abuse of the protest and appeal process and award fees to the office of the Attorney General pursuant to 5 GCA §5425(h)(2). The MCOG requests that the appeal of Cardona be dismissed, and that the Public Auditor award all legal and equitable remedies that the MCOG may be entitled to as a result.

RESPECTFULLY SUBMITTED this 27th day of August, 2025 by:

OFFICE OF THE ATTORNEY GENERAL
Douglas B. Moylan, Attorney General

By: _____
JOSEPH A. GUTHRIE
Chief Deputy Attorney General