

Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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In re:) **APPEAL NO. BP-A097**
)
Appeal of Tang's Corporation,) **Contract No. 700504-OC**
)
) **"Temporary Marpi Landfill Contract"**
)
_____)

FACTUAL BACKGROUND

On August 27, 2020 Tang's Corporation ("Tang's") filed an appeal to the Office of the Public Auditor ("OPA") from the decision of the Director of Procurement and Supply on Tang's protest of the sole-source award of Contract No. 700504-OC to Micronesia Environmental Services, LLC made by the Department of Public Works ("DPW").

Prior to receipt of the appeal, OPA Investigations Division had engaged in a separate review of the disputed contract award but because of the subject matter took affirmative steps to screen personnel in case OPA was later called upon to decide any procurement appeals. This included shielding outside counsel, who was assigned the present matter, from the collateral review.

On October 6, 2020, the Director of Procurement and Supply distributed his report for the Tang's appeal under Contract No. 700504-OC. Unfortunately, the report distributed confidential requests for information regarding OPA's collateral inquiry to OPA's screened personnel and all interested parties. Based on this compromise of the screen between OPA's separate operations and disclosure of the confidential inquiry to interested parties rendered OPA unable to issue a decision on the merits of the present procurement appeal without jeopardizing its independence or compromising its other ongoing operations.¹

¹ OPA has statutory obligations to audit and investigate fraud, waste, and abuse of government funds. 1 CMC § 2304. OPA's regulatory role to oversee and decide administrative appeals from the procurement systems of the Commonwealth central government (and several autonomous agencies) originate from regulations promulgated by other agencies. When confronted with a conflict such as the present, OPA must place core duties that arise by statute in priority over services originating in regulations of other agencies.

On October 9, 2020, immediately after identifying the breach between its separate operations, OPA notified all interested parties of its intent to recuse the office from issuing a decision on the merits of the present appeal and the related appeals of DPW Contract No. 701144-OC and issue a final decision to that effect. It was OPA's intent to promptly notify parties and enter a final decision so that interested parties could seek relief before the Commonwealth Superior Court under the administrative procedures act, 1 CMC § 9112 *et seq.* without further delay or expenditure of resources litigating the matter before OPA.

On October 14, 2020, OPA received a letter from DPW expressing concern about OPA's intention to recuse itself from the matters. Among other concerns, DPW cited the incomplete development of an administrative record if the appeal report, comment, and rebuttal comment processes set forth in NMIAC §§ 70-30.3-501 & 505 as problematic for proper adjudication before the Superior Court. Recognizing the circumstances surrounding this appeal are anomalous and in an effort to accommodate DPW's concerns, OPA dispatched a letter informing all interested parties on October 20, 2020 that it would withhold entering a final decision until expiration of the commenting period. In that same communication, OPA "reset" the commenting period to avoid any prejudice or confusion created by the October 9, 2020 letter on any party interested in submitting comments on the director's report.

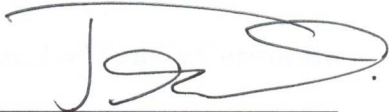
The time period for submitting comments or rebuttal comments has now passed and OPA hereby submits its final decision.

DECISION

For the reasons set forth above, it is OPA's decision that it is unable to issue a ruling on the August 27, 2020 appeal by Tang's Corporation regarding Contract No. 700504-OC. Accordingly, the decision of the Director of Procurement and Supply remains in effect and parties may pursue relief before the Commonwealth Superior Court pursuant to the administrative procedures act, 1 CMC § 9112 *et seq.*

Dated this 18th day of December, 2020.

BY:



JOSEPH J. PRZYUSKI
OPA Legal Counsel

CC: Interested Parties and Counsel:

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Mr. James Ada, Secretary of DPW (james.dpwsecretary@gmail.com)
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