



# Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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**In re:** ) **APPEAL NO. BP-A098**  
)  
**Appeals of Tang's Corporation** ) **Contract No. 701144-OC**  
**and Micronesia Environmental** )  
**Services** ) **"Long term Marpi Landfill Contract"**  
)

## FACTUAL BACKGROUND

On September 24, 2020, Tang's Corporation ("Tang") filed an appeal to the Office of the Public Auditor ("OPA") from the decision of the Director of Procurement and Supply ("Director") on Tang's protest of the award of Contract No. 700504-OC to Micronesia Environmental Services, LLC ("MES") made by the Department of Public Works ("DPW"). On September 29, 2020, MES filed an appeal to OPA from the same decision by the Director.

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 distributed his report for the Tang's appeal under Contract No. 700504-OC, a separate matter that is closely related to the present appeals. Unfortunately, the report distributed confidential requests for information regarding OPA's collateral inquiry to OPA's screened personnel and all interested parties. This compromise of the screen between OPA's separate operations and the 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.<sup>1</sup>

<sup>1</sup> 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

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 appeals. 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.

On November 12, 2020, the Director distributed his report for the Tang's and MES appeals under Contract No. 701144-OC. Tang's submitted comments on the report on November 24, 2020. MES submitted comments on the report on December 2, 2020. DPW submitted comments on the report on December 3, 2020. Tang's filed separate rebuttals to the DPW and MES comments on December 11, 2020.

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

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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.

## DECISION

For the reasons set forth above, it is OPA's decision that it is unable to issue a ruling on the September 24, 2020, appeal by Tang's Corporation or the September 29, 2020, appeal by Micronesia Environmental Services, LLC regarding Contract No. 701144-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 18<sup>th</sup> day of December, 2020.**

BY:



JOSEPH J. PRZYUSKI  
OPA Legal Counsel

CC: Interested Parties and Counsel:

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