

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



# FAX

<b>To:</b>	<b>Ms. Claudia S. Acfalle</b> <b>Chief Procurement Officer</b> General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	<b>From:</b>	<b>Benjamin J.F. Cruz</b> <b>Public Auditor</b> Office of Public Accountability
		<b>Pages:</b>	16 (including cover page)
<b>CC:</b>	<b>Geri E. Diaz, Esq.</b> (Attorney for Appellant Basil Food) Camacho Calvo Law Group LLC 134 W Soledad Ave., Suite 401 Hagatna, Guam 96910 Phone: (671) 472-6813 Fax: (671) 477-4375	<b>Date:</b>	February 28, 2020
		<b>Vanessa L. Williams, Esq.</b> (Attorney for Interested Party SH Enterprises, Inc.) Law Office of Vanessa L. Williams, P.C. 414 West Soledad Avenue GCIC Bldg., Suite 500 Hagåtña, Guam 96910 Phone: (671) 477-1389 Email: VLW@vlwillmslaw.com	<b>Phone:</b> (671) 475-0390 x. 208 <b>Fax:</b> (671) 472-7951

**Re:** OPA-PA-20-003 Notice of Receipt of Appeal

For Review     
  Please Comment     
  Please Reply     
  Please Recycle

**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.com](mailto:jhernandez@guamopa.com)



## OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910  
Phone: (671) 475-0390 / FAX: (671) 472-7951

---

February 28, 2020

Ms. Claudia S. Acfalle  
Chief Procurement Officer  
General Services Agency  
Department of Administration  
148 Route 1 Marine Drive  
Piti, Guam 96915

VIA FACSIMILE: (671) 475-1727

Re: Notice of Receipt of Appeal – OPA-PA-20-003

Dear Ms. Acfalle,

Please be advised that Basil Food Industrial Services Corporation (hereinafter referred to as “Basil Food” filed an appeal with the Office of Public Accountability (OPA) on February 27, 2020, regarding the General Services Agency’s response to Basil Food’s protest of the contract awarded for Nutrition Services for the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program, Congregate Meals and Home-Delivered Meals Components (GSA Invitation for Bid No. GSA-056-19). OPA has assigned this appeal case number OPA-PA-20-003.

Immediate action is required of GSA 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](http://www.opaguam.org). The first six pages of the notice of appeal filed with OPA is enclosed for your reference.

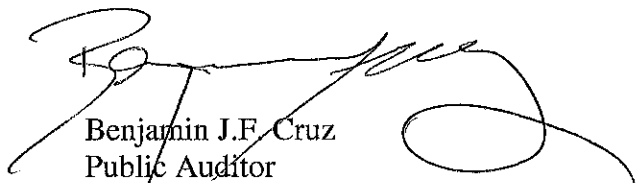
Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities 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), the submission of 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 is required no later than **Monday, March 9, 2020**, five work days following this Notice of Receipt of Appeal. We also request 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 **Monday, March 16, 2020**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to Basil Food. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that GSA provide one original and two copies of the said record, which will be 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](mailto:jhernandez@guamopa.com) should you have any questions regarding this notice.

Sincerely,



Benjamin J.F. Cruz  
Public Auditor

Enclosure: First Thirteen Pages of the Notice of Appeal – OPA-PA-20-003

Cc: Geri E. Diaz, Attorney for Basil Food

CAMACHO CALVO LAW GROUP LLC

GERI E. DIAZ  
gdiaz@camachocalvo.law  
356 E. Marine Corps Drive, Suite 201  
Hagåtña, GU 96910  
Tel No. 671.472.6813  
Fax No. 671.477.4375

Attorney for Appellant  
BASIL FOOD INDUSTRIAL SERVICES CORPORATION

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
DATE: 02/27/2020  
TIME: 4:20 AM BY: C. Roque  
FILE NO OPA-PA: 20-003

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

BASIL FOOD INDUSTRIAL SERVICES  
CORPORATION,

Appellant.

Docket No. OPA-PA- 20-003

**NOTICE OF PROCUREMENT APPEAL**

Basil Food Industrial Services brings this appeal of a procurement controversy against the General Services Agency of the Department of Administration.

**APPELLANT INFORMATION**

Name: Basil Food Industrial Services Corporation ("Basil").  
Mailing Address: 530 West O'Brien Drive, Hagåtña, Guam 96910. For the purposes of this Appeal, please direct filings and correspondence to Basil's legal counsel: Camacho Calvo Law Group LLC, Attn: Geri Diaz, Esq., 356 E. Marine Corps Dr., Ste. 201, Hagåtña, GU 96910.  
Business Address: 530 West O'Brien Drive, Hagåtña, Guam 96910  
Email Address: gdiaz@camachocalvo.law  
Contact No.: 671.472.6813  
Fax No.: 671.477.4375

## **APPEAL INFORMATION**

- A) **PURCHASING AGENCY:** General Services Agency and Department of Health and Social Services – Division of Senior Citizens
- B) **IDENTIFICATION OF CONTRACT:** GSA Bid No. 056-19
- C) **DECISION DATE:** The Decision on which this appeal is based is dated February 8, 2020 by Chief Procurement Officer Claudia S. Acfalle and received by the undersigned on February 12, 2020.
- D) **APPEAL ORIGIN:** Appeal is being made from the Decision denying Basil’s protest of the contract awarded to SH Enterprises based on SH Enterprises’ violation of the ethical standards outlined in the Affidavit Regarding No Gratuities or Kickbacks and the ethical standards memorialized throughout GSA Bid No. 056-19.
- E) **NAMES OF COMPETING BIDDERS, OFFERORS, OR CONTRACTORS KNOWN TO APPELLANT:** SH Enterprises, Inc.

## **STATEMENT SUPPORTING THE APPEAL**

Under Guam Procurement Law, the Office of Public Accountability has jurisdiction over appeals of decisions rendered by the Chief Procurement Officer on protests of method of source selection, solicitation or award of a contract. 5 G.C.A. § 5425(e).

On September 25, 2019, GSA issued an Invitation for GSA Bid No. GSA-056-19 (the “IFB”) for Nutrition Services for the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program, Congregate Meals and Home-Delivered Meals Components. Under the terms of this contract, the bidder was to provide an estimated seven hundred (700) to eight hundred (800) meals to the manamko’ at designated sites, including twelve (12) Senior Citizen Centers and three (3) Adult Day Care Centers (congregate component). The contract also

included the provision for approximately one thousand (1,000) to one thousand two hundred (1,200) meals to those manámko' who live at home (home delivered meals component). The term of the contract was for three (3) years with the option to renew for two (2) additional years.

SH Enterprises submitted its bid packet to GSA on October 24, 2019, and on November 8, 2019, GSA issued a Bid Status indicating that it would award this multi-million dollar contract to SH Enterprises. **Exhibit A.** A signed Purchase Order from GSA dated November 8, 2019 indicated that the provision of meals would commence on December 1, 2019. **Exhibit B.**

On January 24, 2020, the Pacific Daily News reported that the new War Claims Processing Center was now located in the former Hakubotan building in Tamuning. **Exhibit C.** That same day, one of the topics discussed during the Patty Arroyo Show on Newstalk K57 was the new site for the War Claims Processing Center. While on-air, a listener called in and questioned Ms. Arroyo on whether the government had gone through the procurement process to secure the former Hakubotan building as the new location for the processing center. Ms. Arroyo's response was that the owner of the building donated the space, fixtures, and the utilities.

The undersigned immediately served a Freedom of Information Act (FOIA) request on the Governor's office on January 24, 2020 to obtain documentation confirming whether the building was, in fact, donated per the statements made during the radio show. **Exhibit D.**

On January 30, 2020, in response to the FOIA request, the undersigned received a copy of a one-page document dated January 22, 2020 from S.H. Enterprises, Inc. to Governor Leon Guerrero indicating that it was donating "the temporary utilization of approximately +/- 5,000 square feet of commercial space located on the first floor, utilities, and access to the building's parking lot for the Guam War Claims Center." **Exhibit E.** This document is significant in that it

is clear and convincing evidence that S.H. Enterprises had violated 2 GAR, Div. 4, § 11107(4) and 5 G.C.A. § 5630(d) which prohibits favors to the government.

Basil's filed a timely protest to GSA on February 7, 2020. **Exhibit F.** The next day, on February 8, 2020, GSA authored a denial<sup>1</sup> of the protest based on 5 GSA § 5630 (a) and (b), but it completely ignored and failed to address 2 GAR Div. 4 § 11107(4) Favors to the Government of Guam, which is the basis for Basil's protest.

### **LEGAL ARGUMENT**

The Contract specifies that it is governed under the Guam Procurement Act (5 GCA Ch. 5) and the Guam Procurement Regulations. **Exhibit G.** The purpose of the Procurement Regulations is to provide standard policies and procedures governing the procurement, management, control and disposal of supplies, services, and construction for the territory in conformity with Guam Procurement Law. 2 GAR Div. 4 § 1101. Here, SH Enterprises knowingly and willfully violated the Guam Procurement Act, the Guam Procurement Regulations and the terms and conditions of the IFB when it donated the Hakubotan building to the Government of Guam for use as the War Claims Processing Center.

#### **A. SH ENTERPRISES VIOLATED THE PROHIBITION AGAINST FAVORS OR GRATUITIES TO THE GOVERNMENT OF GUAM**

SH Enterprises' bid packet included a "Special Reminder to Prospective Bidders" form that contained a checklist of all the required documents that were essential for the bid opening. **Exhibit H.** Included in the list was a No Kickbacks or Gratuities Affidavit which was signed by Hui Sook Min, the Vice President of SH Enterprises, Inc. **Exhibit I.** In the affidavit, Mrs. Min acknowledged that to the best of her knowledge, neither she nor her officers, representatives,

---

<sup>1</sup> GSA's denial of the protest is dated February 8, 2020 but was not served on the undersigned until February 12, 2020.

agents, subcontractors, or employees have violated or are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Div. 4 § 11107(e). Mrs. Min also promised, on behalf of SH enterprises, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Div. 4 § 11107(e). That section states,

(e) Contract Clause. The following clause shall be conspicuously set forth in every contract and solicitation therefor:

REPRESENTATION REGARDING GRATUITIES AND KICKBACKS

The bidder, offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in §11206<sup>2</sup> (Gratuities and Kickbacks) of the Guam Procurement Regulations.

2 GAR, Div. 4, § 11107(e).

Since § 11206 (Gratuities and Kickbacks), which is referenced in 2 GAR, Div. 4, § 11107(e), is identical to 2 GAR, Div. 4, § 11107 (Gratuities and Kickbacks), the latter applies to the present case and was reviewed in its entirety to verify whether there were any violations.

The most relevant section in 2 GAR, Div. 4, § 11107 is subsection 4<sup>3</sup>, Favors to the Government of Guam. That section states as follows:

(d) Favors to the Territory. For purposes of this Section, a favor is anything, including raffle tickets, of more than *de minimis* value and whether intended for the personal enjoyment of the receiver or for the department or organization in which they are employed or for any person, association, club or organization associated therewith or sponsored thereby. It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of the Territory or for any

---

<sup>2</sup> The current version of the 2 GAR Div. 4 Chapter 11 Public Contracting does not contain § 11206. However, the November 1, 1984 edition of Chapter 11 [Exhibit J] does contain section § 11-206. For comparison purposes, subsections 1, 2 and 3 of 2 GAR, Div. 4, § 11-206 are identical to subsections 1, 2 and 3 of the current 2 GAR, Div. 4, § 11107. It is likely that when the updates and amendments were made to Chapter 11 Ethics in Public Contracting, the Compiler of Law failed to amend this section to ensure that any reference to § 11206 was changed to § 11107.

<sup>3</sup> In the "Source" explanation immediately following the 1997 and 2002 updated editions to 2 GAR Div. 4 § 11107, it states that subsection 4, Favors to the Government of Guam, was added to comply with 5 GCA § 5630(d). Both 2 GAR Div. 4, § 11107(4) and 5 GCA § 5630(d) are identical and were in effect at the time of the issuance of the Invitation for Bid No.: GSA-0056-19, which is the contract that is currently at issue.



employee or agent of the Territory to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the Territory whether or not such favor or gratuity may be considered a reimbursable expense of the Territory, during the pendency of any matter related to procurement, including contract performance warranty periods.

2 GAR, Div. 4, § 11107 (4).

More specifically, § 11107(4) states that it is a breach of ethical standards for any government contractor to give or agree to give an agent of the government of Guam a favor or gratuity during the pendency of any matter related to procurement, including contract performance warranty periods.

This regulation, 2 GAR Div. 4 § 11107(4), is highly relevant and applicable in this case as SH Enterprises willfully breached the prohibition against providing favors to the government. SH Enterprises became a contractor of the Government of Guam on November 8, 2019 when it was awarded the IFB. At that very instance, it became bound to all the terms and conditions outlined in the IFB, including 2 GAR, Div. 4, § 11107 which prohibits gratuities, kickbacks, or favors. Thus, as soon as SH Enterprises donated the Hakubotan building to the Government of Guam in January 2019, which was less than three months after it was awarded the contract, it immediately violated the ethical prohibitions outlined not only in the IFB, but also those proclaimed in Guam's procurement laws and regulations. This act was a complete deviation from S.H. Enterprises' promise to comply with the contract's specifications and requirements.

It should also be emphasized that SH Enterprises' donation of the Hakubotan building to the Government of Guam in January 2019, without more, is sufficient for a violation under 5 G.C.A. § 5630 (d) and 2 G.A.R. § 11107(4). Unlike 5 GCA § 5630(a) & (b) and 2 GAR Div. 4 § 11107(1) & (2) which require that there be evidence of a relationship between the gratuity and a decision, approval, disapproval recommendation, etc., 5 G.C.A. § 5630(d) and 2 GAR § 11107(4)

do not. *See* 2 GAR §11107(b) (which does require that a relationship or connection be made between the gratuity and a decision, approval, disapproval recommendation, etc.)

Surprisingly, GSA denied Basil's protest and indicated that the facts in this case did not warrant a breach. In its denial letter, GSA focused on 5 GCA § 5630<sup>4</sup>, which is entitled "Gratuities and Kickbacks," and referenced only the Gratuities (§ 5630(a)) and Kickbacks (§ 5630(b)) sections. This is in error as GSA should have analyzed and reviewed the entirety<sup>5</sup> of 5 GCA § 5630, which not only encompasses the general rules related to gratuities and kickbacks, but which also includes favors as defined in § 5630(d).

2 GAR Div. 4 § 11107(e) clearly refers to the entirety of § 11206<sup>6</sup> (Gratuities and Kickbacks) of the Guam Procurement Regulations, not just the specific subsections dealing with gratuities and kickbacks, namely 2 GAR Div. 4 § 11107(1) Gratuities and § 11107(2) Kickbacks, whose counterparts are 5 GCA § 5630(a) and (b). Since the reference to § 11206 in 2 GAR Div. 4 § 11107(e) was stated generally, GSA should have reviewed the other subsections of 2 GAR Div.

---

<sup>4</sup> The counterpart to 5 GCA § 5630 is 2 GAR Div. 4, § 11107, which is also entitled "Gratuities and Kickbacks." Both sections are essentially identical with the exception of § 5630(d), which is entitled "Favors to the Territory," while § 11107(4) is entitled "Favors to the Government." Further, § 11107(4) uses the term "Government" instead of "Territory" in the body of that subsection.

<sup>5</sup> In support of the argument that we must look to the entirety of 5 GCA § 5630 (and its counterpart 2 GAR Div. 4 § 11107), we should examine 2 GAR Div. 4 § 11107(e), which generally references the "prohibition against gratuities and kickbacks set forth in § 11206 (Gratuities and Kickbacks)" provision and compare it to 2 GAR Div. 4 § 11107(b)(1) which specifically references the Gratuities provision. 2 GAR Div. 4 § 11107(b)(1) states:

(b) Gratuities Prohibition.

(1) **Breach.** It is a breach of § 11206 (1) (Gratuities and Kickbacks, Gratuities) of these Regulations....

This section states that it only applies to § 11206(1), which in essence is § 11107(1), and it specifically mentions "gratuities" in the phrase "Gratuities and Kickbacks, Gratuities." This is clear evidence of how the drafters narrowed the applicability of 2 GAR Div. 4 § 11107(b)(1).

On the other hand, the reference in 2 GAR Div. 4 § 11107(e) to "§11206 (Gratuities and Kickbacks)" is stated generally such that we must look at the entire section of § 11107 and not just § 11107(1) for Gratuities and § 11107(2) for Kickbacks.

<sup>6</sup> 2 GAR Div. 4 § 11107 and § 11206, they are identical.

4 § 11107 (and 5 GCA § 5630) as they also discuss gratuities, kickbacks and favors. Specifically, 2 GAR Div. 4 § 11107(3) and 5 GCA § 5630(c) discuss the Contract Clause<sup>7</sup>, and both § 11107(4) and § 5630(d) cover Favors to the Territory/Government of Guam.

GSA argued that the donation by SH Enterprises does not meet the requirements for a gratuity, as specified in 5 GCA 5630(a). It stated,

“There was no decision or approval, disapproval recommendation, preparation of any part of the program requirement or a purchase request, including the content of this or any specification or program standard. Nor was there any advice, investigation, auditing or any other advisory capacity in this or any other procurement action. Nor was there any employment offered or given to state that it comes under the definition of Gratuity or Kickback. SH Enterprises donation was not related to this procurement at all.” **Exhibit K.**

This language is derived from both 5 GCA § 5630 (a) 2 GAR Div. 4 § 11107(1). GSA then goes on to state that the requirements for kickback violations, as outlined in 5 GCA § 5630(b), are also not satisfied. However, Basil’s protest specifically refers to and discusses the ethical breach pursuant to 2 GAR Div. 4 § 11107(4) Favors to the Government of Guam and 5 GCA § 5630 (d) Favors to the Territory. Further, as discussed above, the options for breach are not limited to 2 GAR Div. 4 § 11107 (1) and (2) and 5 GCA § 5630 (a) and (b), but the entirety of 2 GAR Div. 4 § 11107 and 5 GCA § 5630.

Per 2 GAR Div. 4 § 11107(a)(1), a gratuity is defined as “a payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or lesser value is received.” 2 GAR Div. 4 § 1106(41). Chapter 11 of 2 GAR Div. 4 also provides another definition of gratuity in 2 GAR Div. 4 § 11101(6) and states that it “means a payment, loan, subscription, advance, deposit of money,

---

<sup>7</sup> 5 GCA § 5630(c) states, “Contract Clause. The prohibition against gratuities, kickbacks and favors to the Territory prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.”

services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received. In this Chapter, the gratuity may include any tangible and intangible benefit in the nature of gifts, favors, entertainment, discounts, passes, transportation, accommodation, hospitality or offers of employment.

Based on these definitions, the donation of the Hakubotan building to the government in January 2020 for use as the War Claims Processing Center is a service or a tangible benefit that is more than nominal value and which falls in line with a gift or a favor that is unquestionably prohibited by the Guam Procurement law and the IFB. This donation was a violation of 2 GAR Div. 4 § 11107(4) and 5 GCA § 5630(d) as these sections quite clearly preclude SH Enterprises, who has been a government contractor since November 2019, from providing favors or gratuities to the government during the contract performance period. The value of the benefits received by the Government of Guam for the free use of the former Hakubotan building, which includes utilities and parking, likely equates to a monumental amount reaching several thousands of dollars and far exceeds the thresholds of what is considered a *de minimus* value.

Not surprisingly, nowhere in GSA's denial does it address SH Enterprises violation of 2 GAR Div. 4 § 11107(4) and 5 GCA § 5630(d). Instead, it skirts around these applicable sections and focuses on different subsections that are not the basis for the protest.

Lastly, in its denial, GSA references 5 GCA § 22408 for the proposition that the Governor is authorized to accept monetary or property donations. However, again, Basil is not contesting the Governor's authority or actions. The focus here is on SH Enterprises' unequivocal failure to abide by the ethical standards provided in 5 GCA §5630(d) and 2 GAR Div. 4 § 11107(4). As a government contractor, SH Enterprises was well aware of its duty to abide by the Guam Procurement law and the terms and provisions of the IFB. *See Affidavit Exhibit I.*

Based on a review of IFB requirements and the relevant Procurement laws and regulations, it is clear that GSA's denial of Basil's protest was in error as SH Enterprises had, in fact, violated not only an integral part of its contract, but also the ethical codes and standards required of a government contractor, which would warrant the remedies requested below.

**B. SH ENTERPRISES WAS AWARE OF THE PROHIBITION AGAINST GRATUITIES AND KICKBACKS**

In addition to the Affidavit Regarding No Gratuities or Kickbacks [Exhibit I], the IFB is replete with information, requirements and prohibitions related to maintaining ethical standards and refraining from the provision of gratuities or kickbacks to either the government or government employees. The following was included in the IFB:

No. 6 of the General Terms and Conditions.

**6. COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidders shall comply with all specifications and other requirements of the Solicitation. **Exhibit G.**

No. 31 of the General Terms and Conditions.

**31. REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The bidder or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and Chapter 11 of the Guam Procurement Regulations. **Exhibit G.**

Section 16.8 Debarment (Guam and Federal) of the General Specification on Item 16.0

Contract Clauses Required by 2 Code of Federal Regulations (CFR) Part 200.

**A. Guam Debarment and Suspension.** Contractor warrants that it will comply with the provisions of 5 GCA Chapter 5 Articles 9 and 11, subject to debarment or suspension. **Exhibit L.**

## Section 22. ADDITIONAL CONTRACT TERMS AND CONDITIONS

**22.2 Prohibition Against Gratuities and Kickbacks.** With respect to this Agreement and any other contract that the Bidder may have, or wish to enter into, with any government of Guam agency, the Bidder represents that he has not violated, is not violating, and promises that it will not violate, the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations. **Exhibit M.**

Tae Hong Min, President, and Hui Sook Min, Vice-President, who both own an equal percentage of SH Enterprises [**Exhibit N**], signed various documents included in the IFB acknowledging that they were aware of the aforementioned ethical requirements and prohibitions and they promised that they would not only comply with all the requirements and specifications of the contract, but that they would also not violate any ethical rules or prohibitions. Despite these promises and assurances, SH Enterprises knowingly and willfully violated the very act that it indicated it would not do and provided a favor to the government.

### REQUESTED REMEDIES

5 GCA § 5651<sup>8</sup> discusses the remedies available for ethical violations. Specifically, the relevant sections of § 5651 states,

(a) Existing Remedies Not Impaired. Civil and administrative remedies against non-employees which are in existence on the effective date of this Chapter shall not be impaired.

(b) Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of this Chapter or regulations promulgated hereunder, the Procurement Policy Office, in connection with non-employees, may impose any one or more of the following:

- (1) written warnings or reprimands;
- (2) termination of transactions; and
- (3) debarment or suspension from being a contractor or subcontractor under territorial contracts.

---

<sup>8</sup> The remedies outlined in 2 GAR Div. 4 § 11112 (Civil and Administrative Remedies Against Non-Employees who Breach Ethical Standards) mirrors 5 GCA § 5651.

(d) Right of the Territory to Debar or Suspend. Debarment or suspension may be imposed by the Procurement Policy Office in accordance with the procedures set forth in § 5426 of this Chapter for breach of the ethical standards of this Chapter, provided that such action may not be taken without the concurrence of the Attorney General.

5 GCA § 5426(b) further discusses the causes for debarment or suspension and it specifically allows for debarment or suspension for violations of the ethical standards set forth in Article 11 of this Chapter. Article 11 is entitled "Ethics in Public Contracting" and it includes 5 GCA §5630 Gratuities and Kickbacks, which is discussed above.

SH Enterprises' clear and willful violation of the ethical provisions in the IFB warrant not only a termination of the contract, but also that SH Enterprises be either debarred or suspended from being a government contractor. The purpose and policies of Guam's Procurement law that were implemented for several reasons, such as to ensure the fair and equitable treatment of all those who participate in the procurement system, to increase individual's confidence in the public procurement process, to encourage healthy competition, and to ensure the quality and integrity of the procurement system, etc., are no longer effective when ethical requirements and standards are violated.

The ethical standards and requirements are discussed not only in the Affidavit Regarding No Gratuities or Kickbacks, which was signed by Hui Sook Min, but also throughout the IFB to ensure that a bidder or contractor cannot falsely claim that they were not aware of these ethical requirements. S.H. Enterprises' deliberate act of donating its Hakubotan building to the Government of Guam soon after receiving a multi-million dollar procurement contract is a significant violation of the contract and it chips away and negates the public's trust in the procurement system. Accordingly, the contract should be terminated and SH Enterprises should be either terminated or suspended as a government contractor.

DATED: Hagåtña, GU, February 27, 2020.

CAMACHO CALVO LAW GROUP LLC



---

GERI E. DIAZ  
Attorney for Appellant  
BASIL FOOD INDUSTRIAL SERVICES  
CORPORATION





Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

---

**OPA-PA-20-003 Notice of Receipt of Appeal**

1 message

---

**Jerrick Hernandez** <jhernandez@guamopa.com>

Fri, Feb 28, 2020 at 1:37 PM

To: Vanessa Williams &lt;vlw@vlwilliamsllaw.com&gt;

Hafa Adai!

Please see attached Notice of Receipt of Appeal for OPA-PA-20-003. Please confirm receipt of this email and the attached document. Thank you.

--

Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA  
Auditor  
Office of Public Accountability – Guam  
www.opaguam.org  
Tel. (671) 475-0390 ext. 208  
Fax (671) 472-7951

This e-mail transmission and accompanying attachment(s) may contain confidential or privileged information. If you are not the intended recipient of this e-mail, please inform the sender and delete it and any other electronic or hard copies immediately. Please do not distribute or disclose the contents to anyone. Thank you.

---

 **20-003 Notice of Receipt of Appeal.pdf**  
498K

FEB/28/2020/FRI 01:52 PM OPA

FAX No. 671 4727951

P. 001/016

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

Camacho Calvo  
Law Group LLC

FEB 28 2020

Time: 2:17 pm

Fax Sent  Fax Received



# FAX

<b>To:</b>	<b>Ms. Claudia S. Acfalle</b> <b>Chief Procurement Officer</b> General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	<b>From:</b>	<b>Benjamin J.F. Cruz</b> <b>Public Auditor</b> Office of Public Accountability
		<b>Pages:</b>	16 (including cover page)
<b>CC:</b>	<b>Geri E. Diaz, Esq.</b> (Attorney for Appellant Basil Food) Camacho Calvo Law Group LLC 134 W Soledad Ave., Suite 401 Hagatna, Guam 96910 Phone: (671) 472-6813 Fax: (671) 477-4375	<b>Date:</b>	February 28, 2020
		<b>Vanessa L. Williams, Esq.</b> (Attorney for Interested Party SH Enterprises, Inc.) Law Office of Vanessa L. Williams, P.C. 414 West Soledad Avenue GCIC Bldg., Suite 500 Hagåtña, Guam 96910 Phone: (671) 477-1389 Email: VLW@vllwillmslaw.com	<b>Phone:</b> (671) 475-0390 x. 208 <b>Fax:</b> (671) 472-7951

**Re:** OPA-PA-20-003 Notice of Receipt of Appeal

For Review

Please Comment

Please Reply

Please Recycle

**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.com](mailto:jhernandez@guamopa.com)

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.