



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-20-003: GSA's Hearing Materials (Witness List, Exhibits, List of Issues)

Sandra Miller <smiller@oagguam.org>

Wed, Jan 27, 2021 at 1:46 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>, "admin@guamopa.com" <admin@guamopa.com>

Cc: Robert Kono <robert.kono@gsa.guam.gov>, Vanessa Williams <vlw@vlwilliamslaw.com>, "Geri E. Diaz" <gdiaz@icclawgroup.com>

Hafa adai Jerrick,
Please see the attached documents for filing in OPA-PA-20-003.

Thank you,

--

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3 attachments**GSA's List of Issues_OPA-PA-20-003.pdf**

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**GSA's Witness List_OPA-PA-20-003.pdf**

131K

**GSA's Exhibit List_OPA-PA-20-003_.pdf**

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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEAL**

IN THE APPEAL OF:)	DOCKET NO. OPA-PA-20-003
)	
BASIL FOOD INDUSTRIAL SERVICE CORPORATION,)	
)	
Appellant,)	PURCHASING AGENCY
)	GSA'S EXHIBIT LIST
AND)	
)	
GENERAL SERVICES AGENCY,)	
)	
Purchasing Agency.)	


COMES NOW GENERAL SERVICES AGENCY (GSA), the purchasing agency in this protest appeal and hereby submits its list of exhibits that may or will be presented to a witness at the hearing in this matter:

EXHIBIT NO.	DATE	DESCRIPTION	ADMITTED
A	03 April 2019	<i>Executive Order 2019-10</i> , Relative to the Reactivation of the Procurement Policy Office and Assistance to General Services Agency	
B	27 February 2020	Basil's <i>Notice of Procurement Appeal</i> , OPA-PA-20-003	
C	11 Dec. 2020	<i>Decision</i> , OPA-PA-19-011 & OPA-PA-20-003	

GSA expressly reserves the right amend or supplement this Exhibit List in order to identify any additional relevant evidence or documents that may be used in its defense or in rebuttal. GSA also reserves the right to question and use any documents identified by Appellant Basil Food Services (Basil) and interested party SH Enterprises (SH).

Respectfully submitted on this 27th day of January, 2021.

OFFICE OF THE ATTORNEY GENERAL
Leevin Taitano Camacho, Attorney General

By: 

SANDRA C. MILLER
 Assistant Attorney General

EXHIBIT A

Executive Order 2019-10

Relative to the Reactivation of the
Procurement Policy Office and
Assistance to General Services Agency

03 April 2019

UFISINAN I MAGA'HÅGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HÅGA • GOVERNOR



JOSHUA F. TENORIO
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

April 2, 2019

Honorable Tina Muna Barnes
Speaker
I Mina'trentai Singko Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagatna, Guam 96932

Re: Executive Order

Dear Madame Speaker:

Pursuant to Public Law 34-16, transmitted herewith is a copy of the following Executive Order:

- **Executive Order 2019-10:** Relative to the Reactivation of the Procurement Policy Office and Assistance to General Services Agency.

If you have any questions, please contact the Office of the Governor.

Senseramente,

SOPHIA SANTOS DIAZ

Legal Counsel

Attachment

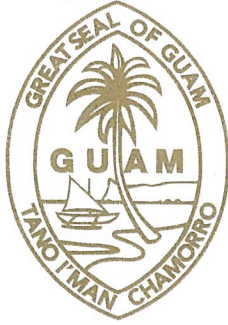
cc: Office of the Compiler of Laws
Central Files, Office of the Governor

0311

354L-19-0311
Speaker Tina Rose Muña Barnes

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**ISLAND OF GUAM
OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96932
U.S.A.**

Executive Order No. 2019-10

**RELATIVE TO THE REACTIVATION OF THE PROCUREMENT
POLICY OFFICE AND ASSISTANCE TO GENERAL SERVICES
AGENCY**

WHEREAS, the current execution of the Guam Procurement Law has shown to be inefficient, causing unnecessary transaction costs for all governmental entities at all levels; and

WHEREAS, an unacceptable number of government projects and purchases are delayed due to ineffective practices; and

WHEREAS, the Government of Guam has returned millions of dollars to federal agencies based on its inability to properly spend the funds within a timely manner; and

WHEREAS, the Procurement Policy Office has not been active for a significant amount of time; and

WHEREAS, clarification of management roles and hierarchy is needed for the General Services Agency to be more effective; and

WHEREAS, the Bureau of Statistics and Plans is in the most opportune position with its staffing pattern and expertise to temporarily assist with procurement for federal grants and awards.

NOW, THEREFORE, I, LOURDES A. LEON GUERERRO, *Maga'hågan Guåhan*, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, and the laws of Guam, do hereby:

1. Reactivate the Procurement Policy Office consistent with 5 GCA §§ 5101-5102 and 2 GAR §§ 2101- 2113;
2. Require the Procurement Policy Office to consider changes to Guam Procurement Regulations, as well as Guam Procurement law to make procurement more efficient and effective;
3. Request that the Procurement Policy Office make recommendations based on their findings through a formal report to the Governor by September 2, 2019.
4. Require that all line agency conducted federally-funded procurement activity and management of such procurement report directly to the Director of the Bureau of Statistics and Plans;
5. Order the Bureau of Statistics and Plans to oversee procurement as it pertains to federal grants and awards;
6. Order the General Services Agency and the Department of Public Works restructure its operations based on the assistance provided by the Bureau of Statistics and Plans and provide more efficiency in exercising their authority over the award or administration of any particular contract, or over any dispute, claim or litigation pertaining thereto; and
7. Mandate that any and all procurement shall be accountable to the Director of the Department of Administration.



ISLAND OF GUAM
OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96932
U.S.A.

Signed and Promulgated at *Hagåtña*, Guam, this 2nd day of April 2019.



LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

Attested by:

TINA ROSE MUÑA BARNES
Åkto Sigundo Maga'hågan Guåhan
Acting Lieutenant Governor of Guam

EXHIBIT B

Basil's Notice of Procurement Appeal
OPA-PA-20-003

27 February 2019

CAMACHO CALVO LAW GROUP LLC

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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
& GOVERNMENT APPEALS
DATE: 02/27/2020
TIME: 4:20 PM BY: C. Roque
FILE NO: 20-003

Attorney for Appellant
BASIL FOOD INDUSTRIAL SERVICES CORPORATION

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 manâmkok' 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 denial¹ 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,

¹ 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 §11206² (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 4³, 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

² 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, § 11-2016 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.

³ 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 § 5630⁴, 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 entirety⁵ 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 § 11206⁶ (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.

⁴ 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.

⁵ 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.

⁶ 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 Clause⁷, 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 § 11106(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,

⁷ 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 § 5651⁸ 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.

⁸ 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

VERIFICATION

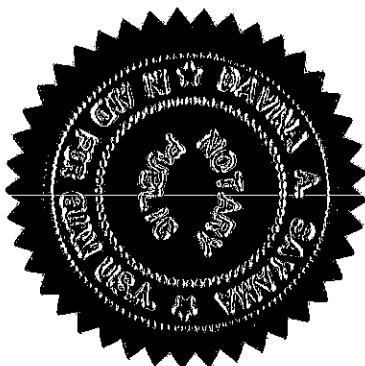
I, MICHAEL ZHOU, am the President of BASIL FOOD INDUSTRIAL SERVICES CORPORATION and I am authorized to make this verification. I have read the foregoing **NOTICE OF PROCUREMENT APPEAL** and, to the best of my knowledge, the information stated therein is true and correct.

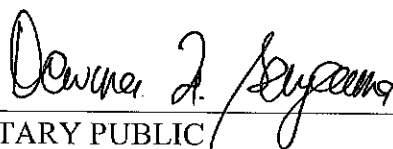
I declare under penalty of perjury that the foregoing is true and correct. This verification was executed on this 27 day of February, 2020.



MICHAEL ZHOU

SUBSCRIBED AND SWORN to before me, a Notary Public, in and for Guam U.S.A., by MICHAEL ZHOU, this 27th day of February, 2020.





NOTARY PUBLIC

DAVINA A. SAYAMA
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **AUG 29, 2022**
149 Sobrino St., Mangilao, GU 96913

EXHIBIT A

GENERAL SERVICE AGENCY
(Añensian Setbision Hinirat)
Government of Guam
590 S. Marine Corps Drive, Suite 210 Tamuning, Guam 96913
Tel: 477-1707-10 Fax: 472-4217 / 475-1716/27

Accountability * Impartiality * Competence * Openness * Value

BID STATUS

November 08, 2019

BASIL FOOD INDUSTRIAL SERVICES
Attn: Betty Ann Dela Cruz, Program Manager
530 West O'Brien Drive
Hagatna, Guam 96932
Tel: (671) 475-8388 / Fax: (671) 475-0088
Email: bettybaza@yahoo.com

BID INVITATION NO.: GSA-056-19

OPENING DATE: October 24, 2019

Nutrition Services for the Comprehensive Management, Operations and Maintenance of the Elderly Nutrition Program, Congregate Meals and Home-Delivered Components.

The following is the result of the above-mentioned bid. Refer to the items checked below.

- Cancelled (in its entirety), or partially cancelled due to
- Insufficient funds;
 - Change of specifications; or
 - Insufficient number of bidders.
- Rejected due to:
- Late submission of bid;
 - No bid security or insufficient bid security;
 - Not meeting the delivery requirement as stated in the IFB;
 - Non-conformance with requirement of IFB: (See Remarks)
 - High price
 - Others

REMARKS: _____

Bid recommended for award:

SH ENTERPRISE, INC. IN THE TOTAL AMOUNT OF \$3,789, 211.00

REMARKS: Thank you for your participation with this bid. Please send your authorized representative to pickup your original bid status and cashier check/bid bond or Standby Letter of Credit.

 11-8-19
CLAUDIA S. ACFALLE
Chief Procurement Officer

Please Print	
ACKNOWLEDGEMENT COPY (Re-fax to GSA)	
Received By:	<u>WILMA SANCHEZ</u>
Date:	<u>1-2-19</u>
Company Name:	<u>Basil Food Services</u>
Fax to: 475-1727 or 472-4217	
E-mail to: gsaprocurment@gsadoa.guam.gov	

EXHIBIT B



PURCHASE ORDER
 GENERAL SERVICES AGENCY
 DEPARTMENT OF ADMINISTRATION
 GOVERNMENT OF GUAM

148 Route 1
 Marine Drive
 P.H. Guam 96925

TRAN CODE

THIS PURCHASE ORDER NUMBER

No. P206A00840

MUST APPEAR ON ALL INVOICES
 PACKING SLIPS, PACKAGES, B/L,
 CORRESPONDENCE ETC.

F.O.B.	* AIR FREIGHT TEL. CONTACT	SHIP VIA:	DATE 11/08/2019	JOB ORDER NO. 173019103230	OE/JCL 230
PREPAID SHOW SHIPPING CHARGES AS SEPARATE ITEM ON INVOICE					

TO:

CALIFORNIA MART
 S.H. ENTERPRISES, INC.
 P.O. BOX 9730
 TAMUNING, GU 96931
 Telephone: 671 649-0521 Fax: 671 649-0527
 Email:

VENDOR
 50097959

CONSIGNEE, DESTINATION & MARKING

DEPT OF PUBLIC HEALTH
 & SOCIAL SERVICES
 123 CHALAN KARETA RTE. 10
 MANGILAO, GU 96923-0000

TITLE III-C-1 CONGREGATE MEALS

AUTHORITY 3109	** INVITATION NO. GSA-056-19	** CONTRACT NO.	TIME FOR DELIVERY SEE BELOW	EXPIRING	DISCOUNT TERMS:
-------------------	---------------------------------	-----------------	--------------------------------	----------	-----------------

ISSUED TO COVER THE COST TO
 PROVIDE CONGREGATE MEAL
 SERVICES. REF: IFB GSA-056-19
 NUTRITION SERVICES FOR THE
 COMPREHENSIVE MANAGEMENT,
 OPERATIONS, AND MAINTENANCE
 OF THE ELDERLY NUTRITION
 PROGRAM, CONGREGATE MEALS
 COMPONENT.

VENDOR MUST COMPLY WITH ALL
 REQUIREMENTS/SPECIFICATIONS
 INCLUSIVE OF ALL TERMS AND
 CONDITIONS WHICH ARE MADE A
 PART OF THIS PURCHASE ORDER.

PERIOD: 12/01/19 - 1/24/2020
 MONDAY THROUGH FRIDAY.

COVERS: 1 THRU 2 MOS. OF A
 NOTE:

THE GOVERNMENT OF GUAM WILL NOT BE RESPONSIBLE FOR 'UNAUTHORIZED' PURCHASES OR SERVICES.
 Note: Amounts due this Purchase Order may be off set for monies due the
 of Guam inclusive of but not limited to taxes, fees, and returned checks
 other damages, penalties, and Attorney's fees, after failure to pay
 To be coordinated between the agency and vendor
 ALL LATE DELIVERIES AND ACCEPTANCES ARE SUBJECT TO THE LIQUIDATED DAMAGES
 6101(9) (a) OF THE GAR.

158441.40 0201730021

SPECIAL INSTRUCTION 5 TO VENDOR:

- B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION; GOVERNMENT OF GUAM, P.O. BOX 884, AGANA, GUAM 96910.
- C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION.
- D. THE ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE.
- E. * THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID.
- F. * ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.

XXXXXXXXXXXX

A. DO NOT FILL THIS ORDER
 IF YOUR TOTAL COST
 EXCEEDS THIS TOTAL.

↑ TOTAL ↑

INSERT CHANGES AND RETURN
 THIS ORDER FOR AMENDMENT.

CONTRACTOR: PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.

ADVANCE PAYMENT
 AUTHORIZATION

PAYMENT
 ENCLOSED

SIGNATURE:

C. Acfalle

Claudia S. Acfalle Chief Procurement Officer



PURCHASE ORDER
 GENERAL SERVICES AGENCY
 DEPARTMENT OF ADMINISTRATION
 GOVERNMENT OF GUAM
 148 Route 1
 Marine Drive
 Piti, Guam 96925

TRAN CODE

THIS PURCHASE ORDER NUMBER
No. P206A00840
 MUST APPEAR ON ALL INVOICES
 PACKING SLIPS, PACKAGES, B/L,
 CORRESPONDENCE ETC.

F.O.B.	* AIR FREIGHT TEL. CONTACT	SHIP VIA:	DATE 11/08/2019	JOB ORDER NO. 173019103230	OBJCT 230
PREPAID SHOW SHIPPING CHARGES AS SEPARATE ITEM ON INVOICE					

TO:

CALIFORNIA MART
 S.H. ENTERPRISES, INC.
 P.O. BOX 9730
 TAMUNING, GU 96931
 Telephone: 671 649-0521 Fax: 671 649-0527
 Email:

VENDOR
 50097959

CONSIGNEE, DESTINATION & MARKING

DEPT OF PUBLIC HEALTH
 & SOCIAL SERVICES
 123 CHALAN KARETA RTE. 10
 MANGILAO, GU 96923-0000

TITLE III-C-1 CONGREGATE MEALS

AUTHORITY 3109	** INVITATION NO. GSA-056-19	** CONTRACT NO.	TIME FOR DELIVERY SEE BELOW	EXPIRING	DISCOUNT TERMS:
-------------------	---------------------------------	-----------------	--------------------------------	----------	-----------------

36 MONTH AGREEMENT

780 CLIENTS X \$5.49 PER MEAL
 = \$4,282.20 X 37 SERVICE DAYS
 = \$158,441.40.

HOLIDAYS ON: MON. DEC. 9, 2019
 OUR LADY OF CAMARIN DAY; WED.
 DEC. 25, 2019 CHRISTMAS DAY;
 WED. JAN. 1, 2020 NEW YEARS.

POC: CHARLENE SAN NICOLAS
 @638-3800 DPHSS

NOTHING FOLLOWS

NOTE:

THE GOVERNMENT OF GUAM WILL NOT BE RESPONSIBLE FOR 'UNAUTHORIZED' PURCHASES OR SERVICES.
 Note: Amounts due this Purchase Order may be off set for monies due the Government plus for other damages, penalties, and Attorney's fees, after failure to pay accordingly.
 To be coordinated between the agency and vendor
 ALL LATE DELIVERIES AND ACCEPTANCES ARE SUBJECT TO THE LIQUIDATED DAMAGES CLAUSE IN SECTION 6101(9) (a) OF THE GAR.

SPECIAL INSTRUCTIONS TO VENDOR:

- B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION; GOVERNMENT OF GUAM, P.O. BOX 884, AGANA, GUAM 96910.
- C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION.
- D. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE.
- E. ** THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID.
- F. * ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.

158441.40

A. DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL.

↑ TOTAL ↑

INSERT CHANGES AND RETURN THIS ORDER FOR AMENDMENT.

CONTRACTOR: PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.

ADVANCE PAYMENT AUTHORIZATION

PAYMENT ENCLOSED

SIGNATURE:

C. Acfalle

Claudia S. Acfalle Chief Procurement Officer



PURCHASE ORDER
 GENERAL SERVICES AGENCY
 DEPARTMENT OF ADMINISTRATION
 GOVERNMENT OF GUAM

148 Route 1
 Marine Drive
 Piti, Guam 96925

TRAN CODE

THIS PURCHASE ORDER NUMBER

No. P206A00840

MUST APPEAR ON ALL INVOICES
 PACKING SLIPS, PACKAGES, B/L,
 CORRESPONDENCE ETC.

FO.B.	* AIR FREIGHT TEL CONTACT	SHIP VIA:	DATE	JOB ORDER NO.	OBJCL
			11/08/2019	173019103230	230
PREPAID-SHOW SHIPPING CHARGES AS SEPARATE ITEM ON INVOICE					

TO:

CALIFORNIA MART
 S.H. ENTERPRISES, INC.
 P.O. BOX 9730
 TAMUNING, GU 96931
 Telephone: 671 649-0521 Fax: 671 649-0527
 Email:

VENDOR

50097959

CONSIGNEE, DESTINATION & MARKING

DEPT OF PUBLIC HEALTH
 & SOCIAL SERVICES
 123 CHALAN KARETA RTE. 10
 MANGILAO, GU 96923-0000

TITLE III-C-1 CONGREGATE MEALS

AUTHORITY	** INVITATION NO.	** CONTRACT NO.	TIME FOR DELIVERY	EXPIRING	DISCOUNT TERMS:
3109	GSA-056-19		SEE BELOW		

THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Acknowledgment copy of this order must be signed and returned advising approximate or definite shipping date.
2. No variation in any of the terms, conditions, deliveries, prices, quantity, quality, or specification on this order, irrespective of the wording of the seller's acceptance, will be effective without buyer's written consent.
3. Packing list must accompany each shipment, showing our order number, description and part/serial number for each item.
4. Shipments must be identified as "PARTIAL" or "COMPLETE".
5. Material is subject to buyer's inspection and approval within a reasonable time after delivery; if specifications are not met, material shall be returned at seller's expense.
6. In connection with any prompt payment discount offered, time will be computed from date of delivery and acceptance at destination, or from the date the correct invoice or voucher is received in the office specified by the Government of Guam, if the latter is later than date of delivery and acceptance. Payment is deemed to be made, for the purpose of earning discount, on the date of the mailing of the check.
7. Overshipments, unless specifically authorized, will not be accepted.
8. In connection with bid awards and contracts, this purchase order shall be governed by the Special Provisions and Bid General Terms and Conditions as specified.

SPECIAL INSTRUCTION \$ TO VENDOR:

- A. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 884, AGANA, GUAM 96910.
- B. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION.
- C. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE.
- D. ** THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID.
- E. * ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.

158441.40

A. DO NOT FILL THIS ORDER
 IF YOUR TOTAL COST
 EXCEEDS THIS TOTAL.

↑ TOTAL ↑

INSERT CHANGES AND RETURN
 THIS ORDER FOR AMENDMENT.

CONTRACTOR: PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.

ADVANCE PAYMENT AUTHORIZATION
 PAYMENT ENCLOSED

SIGNATURE:

C. Acalle

Claudia S. Acalle Chief Procurement Officer



PURCHASE ORDER
 GENERAL SERVICES AGENCY
 DEPARTMENT OF ADMINISTRATION
 GOVERNMENT OF GUAM

148 Route 1
 Marine Drive
 P.H. Guam 96925

TRAN CODE

THIS PURCHASE ORDER NUMBER

No. P206A00840

MUST APPEAR ON ALL INVOICES
 PACKING SLIPS, PACKAGES, B/L,
 CORRESPONDENCE ETC.

FCB.	* AIR FREIGHT TEL. CONTACT	SHIP VIA:	DATE 11/08/2019	JOB ORDER NO. 173019103230	JOB/CL 230
PREPAID SHOW SHIPPING CHARGES AS SEPARATE ITEM ON INVOICE					

TO: CALIFORNIA MART S.H. ENTERPRISES, INC. P.O. BOX 9730 TAMONING, GU 96931 Telephone: 671 649-0521 Fax: 671 649-0527 Email:	VENDOR S0097959	CONSIGNEE, DESTINATION & MARKING DEPT OF PUBLIC HEALTH & SOCIAL SERVICES 123 CHALAN KARETA RTE. 10 MANGILAO, GU 96923-0000 TITLE III-C-1 CONGREGATE MEALS
---	---------------------------	---

AUTHORITY 3109	** INVITATION NO. GSA-056-19	** CONTRACT NO.	TIME FOR DELIVERY SEE BELOW	EXPIRING	DISCOUNT TERMS:
-------------------	---------------------------------	-----------------	--------------------------------	----------	-----------------

<p>VENDOR ACKNOWLEDGMENT</p> <p>RETURN TO SUPPLY MANAGEMENT DIVISION</p> <p>DATE OF RECEIPT OF THIS ORDER <u>11-8-19</u></p> <p>SIGNATURE <u>[Signature]</u></p>		<p>RECEIVING REPORT COPY</p> <p>I CERTIFY THE ABOVE ARTICLES AND/OR SERVICES HAVE/HAS BEEN RECEIVED AND/OR RENDERED AND THE SAME HAS BEEN INSPECTED AND ACCEPTED EXCEPT AS OTHERWISE NOTED HEREIN.</p> <p>DATE RECEIVED: _____ SIGNATURE: _____</p>	
--	--	---	--

<p>SPECIAL INSTRUCTIONS TO VENDOR:</p> <p>B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION; GOVERNMENT OF GUAM, P.O. BOX 884, AGANA, GUAM 96910.</p> <p>C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION.</p> <p>D. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE.</p> <p>E. * * * THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID.</p> <p>F. * ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.</p>	158441.40	<p>A. DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL.</p> <p>← INSERT CHANGES AND RETURN THIS ORDER FOR AMENDMENT.</p>
---	-----------	--

<p>CONTRACTOR: PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE.</p> <p>SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.</p>	<p>ADVANCE PAYMENT AUTHORIZATION</p> <p>PAYMENT ENCLOSED <input type="checkbox"/></p>	<p>SIGNATURE: <u>[Signature]</u></p> <p>NAME: Claudia S. Acalle TITLE: Chief Procurement Officer</p>
--	---	--

ORIGINAL/VENDOR'S COPY

Control No.

Digitally Approved on: 11/8/2019



PURCHASE ORDER
 GENERAL SERVICES AGENCY
 DEPARTMENT OF ADMINISTRATION
 GOVERNMENT OF GUAM

148 Route 1
 Marine Drive
 P.H. Guam 96925

TRAN CODE

THIS PURCHASE ORDER NUMBER
No. 2206A00841

MUST APPEAR ON ALL INVOICES
 PACKING SLIPS PACKAGES AND
 CORRESPONDENCE ETC.

PO.B.	BY AIR SERVICE? TEL. CONTACT? SHIP VIA	DATE 11/03/2019	JOB ORDER NO. 173020004230	OBJCT 230
-------	--	--------------------	-------------------------------	--------------

VENDOR	TO: CALIFORNIA MART S.H. ENTERPRISES, INC. P.O. BOX 9730 TAMUNING, GU 96931 Telephone: 671 649-0521 Fax: 671 649-0527 Email:	VENDOR S0097959	SHIP TO	CONSIGNEE DESTINATION & MARKING DEPT OF PUBLIC HEALTH & SOCIAL SERVICES 123 CHALAN KARETA RTE. 10 MANGILAO, GU 96923-0000 TIT-111C2 HOME DEL MEAL OVRMCH	
	AUTHORITY 3109	IN * INVITATION NO. GSA-056-19		CONTRACT NO.	DATE FOR DELIVERY SEE BELOW

ITEM	ARTICLES OF SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT	DOCUMENT NUMBER	TAC
	<p>ISSUED TO COVER THE COST TO PROVIDE HOME-DELIVERED MEAL SERVICES. REF: IFB-GSA-056-19 ITEM NO. 2.0 NUTRITION SERVICES FOR THE COMPREHENSIVE MANAGEMENT, OPERATIONS, AND MAINTENANCE OF THE ELDERLY NUTRITION PROGRAM, HOME-DELIVERED MEALS COMPONENT.</p> <p>VENDOR MUST COMPLY WITH ALL REQUIREMENTS/SPECIFICATIONS INCLUSIVE OF ALL THE TERMS AND CONDITIONS WHICH ARE MADE A PART OF THIS PURCHASE ORDER.</p> <p>PERIOD: 12/01/19 - 11/30/20 MONDAY THROUGH SUNDAY.</p> <p>COVERS: 1 THRU 2 MOS. OF A</p> <p>NOTE: THE GOVERNMENT OF GUAM WILL NOT BE RESPONSIBLE FOR 'UNAUTHORIZED' PURCHASES OR SERVICES. Note: Amounts due this Purchase Order may be off set for monies due the of Guam inclusive of but not limited to taxes, fees, and returned checks other damages, penalties, and Attorney's fees, after failure to pay to be coordinated between the agency and vendor. ALL LATE DELIVERIES AND ACCEPTANCES ARE SUBJECT TO THE LIQUIDATED DAMAGES CLAUSE IN SECTION 6101(9) (a) OF THE GAR.</p>				307731.30	Q201730022	

SPECIAL INSTRUCTIONS TO VENDOR:		XXXXXXXXXXXX ↑ TOTAL ↑	A. DELIVER FULL THIS ORDER IF YOUR TOTAL COST EXCEEDS 100% TOTAL. REPORT CHANGES AND RETURN THIS ORDER FOR AMENDMENT.
B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, PO BOX 934, AGANA, GUAM 96910. C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION. D. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE. E. * THIS ORDER IS SUBJECT TO THE SPECIAL PROMIONS, AND THE GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID. F. * ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.			
CONTRACTOR PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.		SIGNATURE: <i>C. Acfalle</i> NAME: Claudia S. Acfalle TITLE: Chief Procurement Officer	

Control No.



PURCHASE ORDER
 GENERAL SERVICES AGENCY
 DEPARTMENT OF ADMINISTRATION
 GOVERNMENT OF GUAM

148 Route 1
 Marine Drive
 P.O. Box 96925

TRAN CODE

THIS PURCHASE ORDER NUMBER
No. 2206A00841

MUST APPEAR ON ALL INVOICES
 PACKING SLIP, PACKAGES, OR
 CORRESPONDENCE ETC

DATE 11/30/2013 JOB ORDER NO 173920004233 OFFICE 230

FOR AIR FREIGHT TEL CONTACT SHIPVIA

VENDOR

TO:

CALIFORNIA MART
 S.H. ENTERPRISES, INC.
 P.O. BOX 9730
 TAMUNING, GU 96931
 Telephone: 671 649-0521 Fax: 671 649-0527
 Email:

VENDOR

80097959

SHIP TO

CONSIGNEE DESTINATION & MARKING

DEPT OF PUBLIC HEALTH
 & SOCIAL SERVICES
 323 CHALAN KARETA RTE. 10
 MANGILAO, GU 96923-0000

TIT-11102 HOME DEL MEAL OVRMCH

AUTHORITY 2109

*** NATIONAL NO. 39A-356-13

*** CONTRACT NO.

DATE FOR DELIVERY SEE BELOW

EXPENSES

DISCOUNT TERMS

ITEM	ARTICLE OF SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT	DOCUMENT NUMBER	FAO
THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:							
1. Acknowledgment copy of this order must be signed and returned advising approximate or definite shipping date.							
2. No variation in any of the terms, conditions, deliveries, prices, quantity, quality, or specification on this order, irrespective of the wording of the seller's acceptance, will be effective without buyer's written consent.							
3. Packing list must accompany each shipment, showing our order number, description and part/serial number for each item.							
4. Shipments must be identified as "PARTIAL" or "COMPLETE".							
5. Material is subject to buyer's inspection and approval within a reasonable time after delivery; if specifications are not met, material shall be returned at seller's expense.							
6. In connection with any prompt payment discount offered, time will be computed from date of delivery and acceptance at destination, or from the date the correct invoice or voucher is received in the office specified by the Government of Guam, if the latter is later than date of delivery and acceptance. Payment is deemed to be made, for the purpose of earning discount, on the date of the mailing of the check.							
7. Overshipments, unless specifically authorized, will not be accepted.							
8. In connection with bid awards and contracts, this purchase order shall be governed by the Special Provisions and Bid General Terms and Conditions as specified.							

SPECIAL INSTRUCTIONS TO VENDOR

- B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 924, AGANA, GUAM 96910.
- C. PAYMENT IN TWENTY (20) DAYS UPON RECEIPT OF MERCHANDISE BY GUAM IN GOOD CONDITION.
- D. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE.
- E. IF THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THE BID.
- F. ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.

307731.80

TOTAL

A. CHECK FOR THE CHECKS
 B. CHECK FOR THE CHECKS
 C. CHECK FOR THE CHECKS

CONTRACTOR PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE
 SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS

ADVANCE PAYMENT AUTHORIZATION

PAYMENT ENCLOSED

SIGNATURE

C. Acfalle

Claudia S. Acfalle Chief Procurement Officer



PURCHASE ORDER
 GENERAL SERVICES AGENCY
 DEPARTMENT OF ADMINISTRATION
 GOVERNMENT OF GUAM

148 Route 1
 Marine Drive
 P.H. Guam 96925

TRAN CODE

THIS PURCHASE ORDER NUMBER
No. 2206A00841

MUST APPEAR ON ALL INVOICES
 PACKING SLIPS, PACKAGES, ETC.
 CORRESPONDENCE ETC.

FOR: * AIR FREIGHT TEL CONTACT * SHIP VIA

DATE: 11/03/2019
 JOB ORDER NO: 173020004230
 OBJCD: 230

POORDER

TO:

CALIFORNIA MART
 S.H. ENTERPRISES, INC.
 P.O. BOX 9730
 TAMUNING, GU 96931
 Telephone: 671 649-0521 Fax: 671 649-0527
 Email:

VENDOR
 50097959

SHIP TO

CONSIGNEE DESTINATION & MARKING

DEPT OF PUBLIC HEALTH
 & SOCIAL SERVICES
 123 CHALAN KARETA PTE. 10
 MANGILAO, GU 96923-0000

TIT-111C2 HOME DEL MEAL OVRMCH

AUTHORITY: 3109

IF IS INVITATION NO: GSA-056-19

IF CONTRACT NO:

DATE FOR DELIVERY: SEE BELOW

EXPIRES:

DISCOUNT TERMS:

ITEM	ARTICLES OF SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT	DOCUMENT NUMBER	PAC
	<p>36 MGS. AGREEMENT</p> <p>1180 CLIENTS X \$6.49 PER MEAL = \$7,658.20 X 59 SERVICE DAYS = \$307,731.90</p> <p>HOLIDAYS ON: MON. DEC. 9, 2019 OUR LADY OF CARMAN DAY; WED. DEC. 25, 2019 CHRISTMAS DAY; AND WED. JAN. 1, 2020 NEW YEARS.</p> <p>EOO: CHARLENE SAN NICOLAS 2639-3900 DPHESS</p> <p>***NOTHING FOLLOWS***</p> <p>NOTE: THE GOVERNMENT OF GUAM WILL NOT BE RESPONSIBLE FOR 'UNAUTHORIZED' PURCHASES OR SERVICES. Note: Amounts due this Purchase Order may be off set for monies due the Government of Guam inclusive of but not limited to taxes, fees, and returned checks other damages, penalties, and Attorney's fees, after failure to pay. To be coordinated between the agency and vendor. ALL LATE DELIVERIES AND ACCEPTANCES ARE SUBJECT TO THE LIQUIDATED DAMAGES CLAUSE IN SECTION 6101(9) (a) OF THE GAR.</p>						

SPECIAL INSTRUCTIONS TO VENDOR

- B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 834, AGANA, GUAM 96910.
- C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION.
- D. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE.
- E. IF THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID.
- F. IF ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.

307731.90

↑ TOTAL ↑

A. DENY OF THIS ORDER
 IF YOUR TOTAL DOES
 EXCEED THIS TOTAL

IF YOU HAVE ANY QUESTIONS,
 THE OFFICE OF ADMINISTRATION

CONTRACTOR, PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE.
 SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.

ADVANCE PAYMENT AUTHORIZATION

PAYMENT ENCLOSED

SIGNATURE:

C. Acalle

Claudia S. Acalle, Chief Procurement Officer



PURCHASE ORDER
 GENERAL SERVICES AGENCY
 DEPARTMENT OF ADMINISTRATION
 GOVERNMENT OF GUAM

148 Route 1
 Marine Drive
 P.H. Guam 96925

TRAN CODE

THIS PURCHASE ORDER NUMBER

No. 2206A00841

MUST APPEAR ON ALL INVOICES
 PACKING SLIP, INVOICE, AND
 CORRESPONDENCE ETC.

DATE: 11/08/2013 JOB ORDER NO: 173020054230

230

FOR AIR FREIGHT CONTACT SHIP VIA:

ROOMS

TO:

CALIFORNIA MART
 S.H. ENTERPRISES, INC.
 P.O. BOX 9730
 TAMUNING, GU 96931
 Telephone: 671 649-0521 Fax: 671 649-0527
 Email:

VENDOR
 50097959

SHIP TO

CONSIGNEE DESTINATION & MARKING

DEPT OF PUBLIC HEALTH
 & SOCIAL SERVICES
 123 CHALAM KARETA RTE. 10
 MANGILAO, GU 96923-0000

FIT-111C2 HOME DEL MEAL OVRMCH

AUTHORITY: 3129

INSURANCE: 35A-056-19

CONTRACT NO.

TIME FOR DELIVERY: SEE BELOW

EXPIRES:

DISCOUNT TERMS:

ARTICLES OF SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT	DOCUMENT NUMBER	PAC
***** VENDOR ACKNOWLEDGMENT *****						
RETURN TO SUPPLY MANAGEMENT DIVISION						
DATE OF RECEIPT OF THIS ORDER						
SIGNATURE						
***** RECEIVING RECEIPT COPY *****						
I CERTIFY THE ABOVE ARTICLES AND/OR SERVICES HAVE/HAS BEEN RECEIVED AND/OR RENDERED AND THE SAME HAS BEEN INSPECTED AND ACCEPTED EXCEPT AS OTHERWISE NOTED HEREIN.						
DATE RECEIVED:						
			SIGNATURE:			

SPECIAL INSTRUCTIONS TO VENDOR

- B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 321, AGADIA, GUAM 96910.
- C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION.
- D. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE.
- E. THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THE BID.
- F. ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.

307731.30

↑ TOTAL ↑

A. ENTER THE PURCHASE ORDER NUMBER AND DATE FOR THIS ORDER

FOR THIS ORDER

CONTRACTOR PLEASE SHIP PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.

ADVANCE PAYMENT AUTHORIZATION

PAYMENT ENCLOSED

SIGNATURE:

C. Acalle

Claudia S. Acalle, Chief Procurement Officer

Control No.



PURCHASE ORDER
 GENERAL SERVICES AGENCY
 DEPARTMENT OF ADMINISTRATION
 GOVERNMENT OF GUAM

148 Route 1
 Marine Drive
 PHL, Guam 96926

TRAN CODE

THIS PURCHASE ORDER NUMBER

No. P206A00979

MUST APPEAR ON ALL INVOICES
 PACKING SLIPS, PACKAGES, B/L,
 CORRESPONDENCE ETC.

FO.B.	* AIR FREIGHT TEL. CONTACT	SHIP VIA:	DATE 11/14/2019	JOB ORDER NO. 173020004230	CBTCL 230
PREPAID-SHOW SHIPPING CHARGES AS SEPARATE ITEM ON INVOICE.					

TO:

CALIFORNIA MART
 S.H. ENTERPRISES, INC.
 P.O. BOX 9730
 TAMUNING, GU 96931
 Telephone: 671 649-0521 Fax: 671 649-0527
 Email:

VENDOR
 S0097959

CONSIGNEE, DESTINATION & MARKING

DEPT OF PUBLIC HEALTH
 & SOCIAL SERVICES
 123 CHALAN KARETA RTE. 10
 MANGILAO, GU 96923-0000

TIT-IIIC2 HOME DEL MEAL OVRMCH

AUTHORITY 3109	** INVITATION NO. GSA-056-19	** CONTRACT NO.	TIME FOR DELIVERY SEE BELOW	EXPIRING	DECOUNTY TERMS:
-------------------	---------------------------------	-----------------	--------------------------------	----------	-----------------

1 SUPPLEMENTAL PURCHASE ORDER FOR P206A00841 HOME DELIVERD MEALS IFB: GSA-056-19 ADDITIONAL FUNDS;\$ 144,102.00 P206A00841 = \$307,731.80 P206A00919 = \$144,102.00 TOTAL \$451,833.80 PERIOD OF COVERAGE: DECEMBER 2019 TO JANUARY 2020 * AUTHORIZED PERSONNEL * CHARLENE SAN NICOLAS 638-3800 * NOTHING FOLLOWS NOTE: THE GOVERNMENT OF GUAM WILL NOT BE RESPONSIBLE FOR 'UNAUTHORIZED' PURCHASES OR SERVICES. Note: Amounts due this Purchase Order may be off set for monies due the of Guam inclusive of but not limited to taxes, fees, and returned checks other damages, penalties, and Attorney's fees, after failure to pay ALL LATE DELIVERIES AND ACCEPTANCES ARE SUBJECT TO THE LIQUIDATED DAMAGES CLAUSE IN SECTION 6101(9) (a) OF THE GAR.	1 LOT	144102.000	144102.00	0201730024
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SPECIAL INSTRUCTIONS TO VENDOR: B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 884, AGANA, GUAM 96910. C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION. D. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE. E. ** THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID. F. * ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.	144102.00	A. DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL.
---	-----------	---

CONTRACTOR: PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.	ADVANCE PAYMENT AUTHORIZATION PAYMENT ENCLOSED <input type="checkbox"/>	SIGNATURE: <i>C. Acfalle</i> Claudia S. Acfalle Chief Procurement Officer
--	--	---



PURCHASE ORDER
 GENERAL SERVICES AGENCY
 DEPARTMENT OF ADMINISTRATION
 GOVERNMENT OF GUAM

148 Route 1
 Marine Drive
 Piti, Guam 96926

TRAN CODE

THIS PURCHASE ORDER NUMBER

No. 2206A00979

MUST APPEAR ON ALL INVOICES
 PACKING SLIPS, PACKAGES, B/L,
 CORRESPONDENCE ETC.

F.O.B.	AIR FREIGHT TEL. CONTACT	SHIP VIA:	DATE	JOB ORDER NO.	OBJ.
			11/14/2019	173020004230	230

PREPAID-SHOW SHIPPING CHARGES AS SEPARATE ITEM ON INVOICE.

TO: CALIFORNIA MART S.H. ENTERPRISES, INC. F.O. BOX 9730 TAMUNING, GU 96931 Telephone: 671 649-0521 Fax: 671 649-0527 Email:	VENDOR S0097959	CONSIGNEE, DESTINATION & MARKING DEPT OF PUBLIC HEALTH & SOCIAL SERVICES 123 CHALAN KARETA RTE. 10 MANGILAO, GU 96923-0000 TIT-IIIC2 HOME DEL MEAL OVRMCH
---	---------------------------	---

AUTHORITY 3109	** INVITATION NO. GSA-056-19	** CONTRACT NO.	TIME FOR DELIVERY SEE BELOW	EXPIRING	DISCOUNT TERMS
-------------------	---------------------------------	-----------------	--------------------------------	----------	----------------

THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Acknowledgment copy of this order must be signed and returned advising approximate or definite shipping date.
2. No variation in any of the terms, conditions, deliveries, prices, quantity, quality, or specification on this order, irrespective of the wording of the seller's acceptance, will be effective without buyer's written consent.
3. Packing list must accompany each shipment, showing our order number, description and part/serial number for each item.
4. Shipments must be identified as "PARTIAL" or "COMPLETE".
5. Material is subject to buyer's inspection and approval within a reasonable time after delivery; if specifications are not met, material shall be returned at seller's expense.
6. In connection with any prompt payment discount offered, time will be computed from date of delivery and acceptance at destination, or from the date the correct invoice or voucher is received in the office specified by the Government of Guam, if the latter is later than date of delivery and acceptance. Payment is deemed to be made, for the purpose of earning discount, on the date of the mailing of the check.
7. Overshipments, unless specifically authorized, will not be accepted.
8. In connection with bid awards and contracts, this purchase order shall be governed by the Special Provisions and Bid General Terms and Conditions as specified.

SPECIAL INSTRUCTIONS TO VENDOR: K. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 884, AGANA, GUAM 96910. C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION. D. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE. E. ** THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID. F. * ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.	144102.00	A. DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL. ← INSERT CHANGES AND RETURN THIS ORDER FOR AMENDMENT.
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CONTRACTOR: PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES ON SERVICE. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.	ADVANCE PAYMENT AUTHORIZATION <input type="checkbox"/>	PAYMENT ENCLOSED <input type="checkbox"/>	SIGNATURE: Claudia S. Acalle NAME Acalle Chief Procurement Officer TITLE
---	---	--	--



PURCHASE ORDER
 GENERAL SERVICES AGENCY
 DEPARTMENT OF ADMINISTRATION
 GOVERNMENT OF GUAM

148 Route 1
 Marine Drive
 P.O. Box 96926

TRAN CODE

THIS PURCHASE ORDER NUMBER

No. P206A00979

MUST APPEAR ON ALL INVOICES
 PACKING SLIPS, PACKAGES, B/L,
 CORRESPONDENCE ETC.

F.O.B.	* AIR FREIGHT TEL. CONTACT	SHIP VIA:	DATE 11/14/2019	JOB ORDER NO. 173020004230	OBJCL 230
PREPAID SHOW SHIPPING CHARGES AS SEPARATE ITEM ON INVOICE.					

TO: CALIFORNIA MART S.H. ENTERPRISES, INC. P.O. BOX 9730 TAMUNING, GU 96931 Telephone: 671 649-0521 Fax: 671 649-0527 Email:	VENDOR S0097959	CONSIGNEE, DESTINATION & MARKING DEPT OF PUBLIC HEALTH & SOCIAL SERVICES 123 CHALAN KARETA RTE. 10 MANGILAO, GU 96923-0000 TIT-IIIC2 HOME DEL MEAL OVRMCH
---	---------------------------	---

AUTHORITY 3109	** INVITATION NO. GSA-056-19	** CONTRACT NO.	TIME FOR DELIVERY SEE BELOW	EXPIRING	DISCOUNT TERMS
-------------------	---------------------------------	-----------------	--------------------------------	----------	----------------

 * VENDOR ACKNOWLEDGMENT *
 * RETURN TO SUPPLY MANAGEMENT DIVISION *
 * DATE OF RECEIPT OF THIS ORDER 11-18-19 *
 * SIGNATURE [Signature] *

 * RECEIVING REPORT COPY *
 * I CERTIFY THE ABOVE ARTICLES AND/OR SERVICES HAVE/HAS BEEN *
 * RECEIVED AND/OR RENDERED AND THE SAME HAS BEEN INSPECTED *
 * AND ACCEPTED EXCEPT AS OTHERWISE NOTED HEREIN. *
 * DATE RECEIVED: _____ SIGNATURE: _____ *

SPECIAL INSTRUCTIONS TO VENDOR: B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 884, AGANA, GUAM 96916. C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION. D. THE ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE. E. ** THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID. F. ** ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.	144102.00	A. DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL.
	↑ TOTAL ↑	← INSERT CHANGES AND RETURN THIS ORDER FOR AMENDMENT.

CONTRACTOR: PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.	ADVANCE PAYMENT AUTHORIZATION PAYMENT ENCLOSED <input type="checkbox"/>	SIGNATURE: [Signature] Claudia S. Achalle NAME: Achalle TITLE: Chief Procurement Officer
--	--	--

EXHIBIT C

HAPA 1000
IT'S FRIDAY



GUAMNEWS.COM
GUAM'S COMPLETE SOURCE

Pacific Daily News

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JANUARY 24, 2020

PART OF THE USA TODAY NETWORK

War claims office opens today

Jaidee Eugenio Gilbert
Pacific Daily News
USA TODAY NETWORK

World II survivors with adjudicated claims can present their documents to officials at the former Habotan building in Tamuning today, and they could start receiving compensation next week, according to the governor.

The Guam Department of Administration will open the war claims processing center at 9 a.m. today, and claims will be paid with nearly \$14 million in local funds.

At the same time, Guam officials are now preparing a petition to the federal government to expand the 2015 World War II Loyalty Recognition Act so that more war survivors can file claims.

"It's a great day for our people of Guam, our manamko," Gov. Lou Leon Guerrero said, moments before signing on Thursday a memorandum of agreement with the U.S. Treasury.

The agreement clears the path for the processing of adjudicated war claims payments.

The U.S. Treasury signed the agreement Wednesday, Washing-

ton, D.C. time or early Thursday, Guam time.

This comes nearly 76 years since the liberation of Guam from Japanese occupation during the war, and three weeks after the governor signed the local war claims payment bill that Speaker Tina Muria Barnes, Sen. Amanda Shelton and

See WAR CLAIMS, Page 4

Man injured in Maite



Guam Fire Department personnel treat a wounded man as Guam Police department officers attempt to gather information at the site of the former Lemai Cafe in Maite on Thursday. (PHOTO BY CRUZ/FDA)

Social Security benefits case under advisement

Jerick Sablan
Pacific Daily News
USA TODAY NETWORK

Guam resident Katrina Schaller lives with a permanent disability, but she is unable to receive support payments under the federal Supplemental Security Income program.

Her twin sister, Leslie Schaller, suffers from the same debilitating genetic disorder - myotonic dystrophy, but receives about \$800 a month in SSI because she lives in Pennsylvania.

U.S. District Court of Guam Chief Judge Frances Tydingco-Ga-

See SOCIAL SECURITY, Page 4

Customers Eligible

Happy Honda **NEW YEAR** 50 DOWN • NO PAYMENT FOR 90 DAYS

triplejguam.com

Local

War claims

Continued from Page 1

Sen. Wil Castro introduced.

"Getting to this point wasn't easy and our work isn't over, but we are now beginning to heal old wounds and honor our Greatest Generation. And we say to those still alive to hear it, your long wait is over," the governor said.

With many of the claims so far adjudicated granting \$10,000 and \$12,000 each, GovGuam could end up making advance payments to about 1,400 still-living war survivors.

More than 3,650 war survivors and their heirs filed war claims, which could total \$40 million.

Most of them would be paid once Del. Mike San Nicolas' H.R. 1365 passes the Senate and is signed by President Trump. San Nicolas said the Senate could pass it "within a few weeks."

The governor and the speaker said they will continue to advocate for the passage and signing of San Nicolas' bill. The governor thanked all the former delegates whom she said "paved the road and made our journey a lot easier so that we can get to where we are today."

Processing begins Jan. 24

"We are trying to make the process as simple as possible," the governor said at the Thursday signing ceremony, with Lt. Gov. Josh Tenorio, senators and Cabinet members in attendance.

What war survivors need to bring to the processing center:

1 The letter they received from the Foreign Claims Settlement Commission stating they are entitled to receive monetary compensation;

2 A government-issued photo ID.

3 At the war claims processing center, survivors will be asked to sign two documents, authorizing Treasury to release the survivors' informa-



Gov. Lou Leon Guerrero signs a memorandum of agreement with the U.S. Treasury on Thursday, paving the way for GovGuam to start processing the payment of adjudicated war claims by still-living World War II survivors using nearly \$14 million in local funds, while other officials applaud. Also in the photo are Lt. Gov. Josh Tenorio, senators led by Speaker Tina Muna Barnes, the governor's chief of staff Tony Babauta, and press secretary Krystal Paco-San Agustín. HANDEL EUGENIO GIBERT/PDN

tion to GovGuam, and assigning their claim to GovGuam;

4 Then they need to wait for a notification from GovGuam that their war claims payment check is ready.

Tony Babauta, the governor's chief of staff, said at the end of each day, the Department of Administration will electronically transmit to Treasury the documents from the war survivors.

They are password protected to ensure privacy and confidentiality of war survivors' information.

Babauta said GovGuam anticipates the free-

sure will respond within three to four days, after verifying the claims that GovGuam collected.

GovGuam could start getting verification from the Treasury by Wednesday or Thursday next week, he said.

Babauta said the war claims processing center will be open 9 a.m. to 4 p.m., Monday to Friday. However, it will also be open on Saturday, Jan. 25, to accommodate more survivors.

Those with questions and concerns about the local war claims processing program are encouraged to call 482-0792 or 482-8931 or visit warclaims.guam.gov, officials said.

Petition for more war claims

The speaker's office on Thursday said there is now a draft petition to ask Congress to amend the 2016 law that allows for the payment of war claims, so that more of Guam's war survivors can still file claims.

Some people either missed the June 20, 2018 war claims filing deadline or were not previously aware of a war claims program.

The speaker said she would leave no stone unturned so that all war survivors could be compensated.

Payment of war claims using Section 30 funds were supposed to begin in fiscal 2019, but there was a technical flaw in the 2016 law that San Nicolas is seeking to fix through H.R. 1365.

Once San Nicolas' bill becomes law, it would allow U.S. Treasury to start releasing payments to Guam's war survivors and certain heirs using more than \$20 million in Section 30 funds that are already available. More Section 30 funds will be put in the war claims funding towards the end of fiscal 2020.

Adelup had said that once San Nicolas' H.R. 1365 passes the Senate and is enacted into law, then a portion of that funding would cover the GovGuam funding used to advance the payment of war claims to still-living war survivors.

Social Security

Continued from Page 1

lewood heard arguments in the lawsuit against the Social Security Administration over the inability of Guam residents to receive certain benefits. The judge took the matter under advisement.

The failure to provide benefits to people on Guam with disabilities violates the Organic Act and also the equal protection clauses of the Constitution, the lawsuit states.

Residents of the Commonwealth of the Northern Mariana Islands are eligible for SSI payments, because the benefit is included in the CNMI covenant with the United States.

But residents of Puerto Rico, Guam, and the U.S. Virgin Islands were intentionally excluded from the SSI program, which started in 1972.

"Katrina is denied eligibility for federal SSI benefits solely because she lives on Guam, rather than in any of the 50 states, the District of Columbia or the nearby territory of the CNMI," her lawsuit states.

The lawsuit notes Katrina Schaller received the benefits when she lived with her mother in Pennsylvania. "But when she moved to Guam to be with family upon her mother's death, Katrina's SSI benefits were cut off."

The lawsuit states that Leslie Schaller also wants to travel to Guam to see her sisters, "but she cannot do so for more than 30 days for fear of losing access to the SSI benefits necessary for her support."

The lawsuit asks the court to find that provisions of the SSI law discriminate based on status as a Guam resident and are unconstitutional, and to prevent the Social Security Administration from enforcing those provisions.

Attorney Mike Williams, who represents Schaller, said the twin sisters are being treated differently just because of where one of them lives.

Leslie Schaller is able to live more independently because she has SSI benefits.

Williams said Katrina Schaller would be a ward of the state if it wasn't for her family support on Guam.

He said the twin sisters haven't seen each oth-

er for a decade, and Leslie Schaller would like to visit, but she's scared she'll lose her benefits.

Williams argued that the sisters should be treated the same by the federal government, and it's unconstitutional to treat one differently because she lives in a territory.

He said Katrina Schaller is sick and is being deprived of resources.

U.S. Department of Justice Attorney Michael Zee argued that it was up to Congress to make policy decisions, and not the court.

Congress created the law for the SSI benefits and only included the 50 states and the District of Columbia.

The CNMI is included in the benefits because it was able to negotiate it in when making the covenant with the U.S., he said.

Williams argued that the court has the power to address whether his client is being discriminated against in violation of the U.S. Constitution.

After about an hour and a half of arguments, Tydingco-Garewood said she would take the matter under advisement and issue a decision later.

EXHIBIT D



**CAMACHO
CALVO**
LAW GROUP LLC

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
BY: C. Roque
DATE: 01/24/20
TIME: 4:30 AM PM

January 24, 2020

VIA HAND DELIVERY

OFFICE OF THE GOVERNOR OF GUAM
Ricardo J. Bordallo Complex
513 West Marine Corps Drive
Hagåtña, Guam 96910



RCUD AT CENTRAL FILE
JAN 24 '20 PM 4:18
Elaine Tajalle

Re: Freedom of Information Act Request

To the Honorable Governor Lourdes Leon Guerrero:

In accordance with the Freedom of Information Act (5 GCA § 10103), I hereby request the following documents:

The full, complete and entire file relating to and/or discussing the use of the former Hakubotan building in Tamuning to the Government of Guam for use as the War Claims Processing Center. The information should include, but is not limited to, documentation of the following:

1. Authorization from either Hui Sook Min or SH Enterprises to the Government of Guam or the Guam Department of Administration to utilize this building for war claims services;
2. The terms and the conditions of the agreement between Hui Sook Min or SH Enterprises and the Government of Guam or the Guam Department of Administration for use of this building for war claims services;
3. The goods and services provided by Hui Sook Min or SH Enterprises to the Government of Guam or the Guam Department of Administration related to the use of this building for war claims services;
4. Any agreement between Hui Sook Min or SH Enterprises and the Government of Guam or the Guam Department of Administration memorializing the cost and fees to utilize this building for war claims services; and
5. Any and all written communication, including emails, which discuss or confirm Hui Sook Min's or SH Enterprises' agreement to allow the Government of Guam or the Guam Department of Administration to utilize this building for the War Claims Processing Center.

COPY

OFFICE OF THE GOVERNOR OF GUAM

January 24, 2020

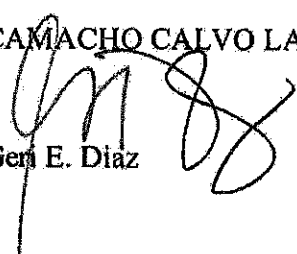
Page 2

Please let me know if you have any questions about this request or need any clarification. Your cooperation is most appreciated. Per 5 G.C.A. §10103, these public records should be made available within four (4) working days from receive of this request.

Sincerely,

CAMACHO CALVO LAW GROUP LLC

Gen E. Diaz

A handwritten signature in black ink, appearing to be 'Gen E. Diaz', written over the printed name.

GED/abm
066987-00105.120765

cc: AG
OPA

Basil SECOND Appeal (066987-001 vs. 124654)
Re GSA-056-19

EXHIBIT E

COPY

S.H. Enterprises, Inc.
190 Chalan San Antonio Building
Tamuning, Guam 96913

January 22, 2020

Ms. Lou A. Leon Guerrero
Honorable Governor of Guam
C/O Jon Calvo, Deputy Chief of Staff
and Jesse Garcia, Deputy Director DPW
Governor's Complex
Hagatna, Guam 96910

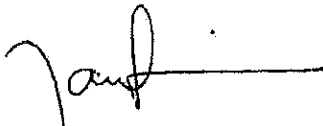
Dear Honorable Governor,

It was a pleasure meeting with your team on the availability of the former Hakubotan building and facility. After understanding the temporary need to setup a space for the Government of Guam's war claims program, it is our deepest honor to donate an unused section of the building for this purpose.

As longtime residents of Guam, we recognize how important this initiative is to our Manamko' and we are pleased to play a small role in this process for our island community.

The nature of this donation includes 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. The space may be available until Saturday, February 8, 2020.

Thank you for your time and leadership.



TAE MIN
President
S.H. Enterprises, Inc.

RECEIVED

J. Min
1/22/2020

EXHIBIT F



CAMACHO
CALVO
LAW GROUP LLC

February 7, 2020

VIA HAND DELIVERY

GENERAL SERVICES AGENCY
590 S. Marine Corps Drive, Suite 219
Tamuning, Guam 96932

Attention: Claudia Acfalle, *Chief Procurement Officer*

Re: PROTEST OF THE AWARD OF GSA-056-019 TO SH ENTERPRISES, INC.
BASED ON ETHICAL VIOLATIONS

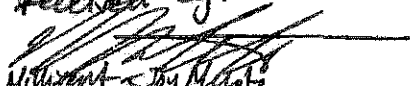
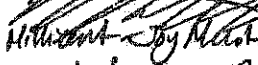
Dear Ms. Acfalle:

Basil Foods Industrial Services ("Basil") protests the award of Bid No. GSA-056-19 issued by GSA to SH Enterprises, Inc. for the Nutrition Services for the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program, Congregate Meals and Home-Delivered Components due to its violation of Guam's procurement laws and regulations. You may reach Basil through its attorneys, Camacho Calvo Law Group LLC, Geri E. Diaz, Esq., at 356 E. Marine Corps Drive, Suite 201, Hagåtña, Guam 96910.

I. BASIL'S PROTEST IS TIMELY

Under Guam procurement law, an actual bidder who has been aggrieved in connection with the method of source selection, solicitation or award of a contract may file a protest to the Chief Procurement Officer "in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto." 5 G.C.A. § 5425(a). The Supreme Court of Guam confirmed this timeline, and explained that the Guam Administrative Rules and Regulations ("GAR") also prescribe the same time standards for filing a protest. Teleguam Holdings, LLC v. Guam, 15 Guam 13 ¶¶ 22-23.

On January 24, 2020, it was reported in the Pacific Daily News that the War Claims Processing Center had opened its new location in the former Hakubotan building in Tamuning. **Exhibit A.** 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 building, its fixtures and the utilities were donated.

Received by:

Witnessed by: 
2/10/2020 @ 8:32 am

COPY

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 B.**

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 C.** 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 first knowledge of a potential ethical violation committed by S.H. Enterprises occurred upon hearing the statements made on Patti Arroyo's January 24, 2020 on-air show on Newstalk K57. Accordingly, the filing of this protest on February 6, 2020 is timely.

II. S.H. ENTERPRISES, INC. PROVIDED A FAVOR TO THE GOVERNMENT OF GUAM IN VIOLATION OF ETHICAL STANDARDS SET FORTH IN THE PROCUREMENT LAWS AND REGULATIONS

GSA issued Bid Invitation No. GSA-059-019 for Nutrition Services for the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program, Congregate Meals and Home-Delivered Meals Components. **Exhibit D.** Included in the very first page of the 151-page document was a Special Reminder to Prospective Bidders of the required documents to be included in the bid envelope for consideration during the bid opening, including the Affidavit Disclosing Ownership and Commissions, the Affidavit Regarding No Gratuities or Kickbacks, and the Affidavit Regarding Ethical Standards. **Exhibit E.** Hui Sook Min, one of the authorized representatives for S.H. Enterprises, acknowledged receipt of the Special Reminder form on October 8, 2019. **Exhibit D.**

In the Affidavit Disclosing Ownership and Commissions, Mrs. Min affirmed that she is an authorized representative of S.H. Enterprises, Inc., and that she owned 50% interest in this company while Tae Hong Min owned the remaining 50%. **Exhibit E.**

Mrs. Min also affirmed in the Affidavit Regarding No Gratuities or Kickbacks that she is the Vice-President of S.H. Enterprises, Inc. and that to the best of her knowledge, neither she nor any of S.H. Enterprises' officers, representatives, agents, subcontractors, or employees have violated, [or] are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(e). She promised on behalf of S.H. Enterprises *not to violate* that provision and she also affirmed that neither she nor any of S.H. Enterprises' officers, representatives, agents, subcontractors, or employees have offered, given or agreed to give, any government of Guam employee or former government employee, any payment, gift, kickback, gratuity or offer of employment in connection with S.H. Enterprises' bid proposal. **Exhibit E.**

Basil protests the award of GSA-056-019 to S.H. Enterprises because S.H. Enterprises donated approximately +/- 5,000 square feet of commercial space on the first floor of the former Hakubotan building, including utilities and access to the building's parking lot, as a favor to the Government of Guam for use as the Guam War Claims Processing Center. This donation is in direct contravention to the contract specifications set forth in GSA-056-019 and is a violation of 2 GAR, Div.4, § 11107(4) Favors to the Government of Guam and 5 G.C.A. § 5630(d) Favors to the Territory.

A. The Purpose of Guam's Procurement Laws and Regulations

At the onset, it should be emphasized that the underlying purposes and policies of the procurement law is to provide for increased public confidence in the procedures followed in public procurement, to ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory, to foster effective broad-based competition within the free enterprise system, to provide safeguards for the maintenance of a procurement system of quality and integrity, etc. 5 G.C.A. § 5001; 2 GAR, Div. 4 § 1102.

Guam's procurement laws and regulations includes essential standards of ethical conduct as well as standard policies and procedures which must be observed and adhered to by those doing business with the Territory in order to advance these goals. 5 G.C.A. § 5625; 2 GAR, Div. 4 § 1101.

B. The Prohibition of Favors to the Government

The Affidavit Regarding No Gratuities or Kickbacks, which was signed by Mrs. Min specifically references 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 (Gratuities and Kickbacks) of the Guam Procurement Regulations.

2 GAR, Div. 4, § 11107(e).

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 greater value is received." 5 GCA § 5601(f); 2 GAR, Div. 4, § 11101(a)(6) and § 1106 (41). A gratuity may include "any tangible and intangible benefit in the nature of gifts, favors, entertainment, discounts, passes, transportation, accommodation, hospitality, or offers of employment. Nominal value means actual worth or actual cost, whichever is greater, which does

not exceed \$25 individually or cumulatively.” 2 GAR, Div. 4, § 11101(a)(6). Based on these definitions, gratuities and favors are one in the same.

At issue in this protest is the violation of 2 GAR, Div. 4, § 11107(4), which states,

(4) Favors to the Government of Guam. For purposes of this subsection, a favor is anything, including raffle tickets, or 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...to offer, give or agree to give any employee or agent of the government of Guam or for any employee or agent of the government of Guam to solicit or accept from any such person or entity or agent thereof *a favor or gratuity on behalf of the government of Guam whether or not such favor or gratuity may be considered a reimbursable expense of the government of Guam, during the pendency of any matter related to procurement, including contract performance warranty periods.* [Emphasis added.]

2 GAR, Div. 4, § 11107 (4). Its counterpart, 5 G.C.A. § 5630(d), is nearly identical, but instead of “Government of Guam,” it uses the word “Territory.”

Upon signing the Affidavit Regarding No Gratuities or Kickbacks, Mrs. Min, on behalf of S.H. Enterprises, acknowledged that she was fully apprised of the ethical standards prohibiting gratuities, and she knowingly affirmed that neither she nor S.H. Enterprises’ representatives had violated, were violating, *or will violate* this prohibition. In fact, her signature on this document evidences not only her knowledge and intent to comply with this requirement, but also her assurance that S.H. Enterprises and its representatives would comply as well.

Surprisingly, however, S.H. Enterprises’ willfully breached the contract when it donated a section of the former Hakubotan building to the government less than three months after it was awarded the GSA-056-019 contract. This act was a complete deviation from S.H. Enterprises’ promise to comply with the contract’s specifications and requirements and is a significant breach of the ethical standards proclaimed in Guam’s procurement laws and regulations. It should be noted that the sheer size of the benefits provided to the Government of Guam for the free use of the former Hakubotan building, which includes utilities and parking, far exceeds the thresholds of what is considered a *de minimus* value. Also, at the time this favor was provided to the government, S.H. Enterprises was already a government contractor as it had been just awarded a multi-million dollar procurement contract¹ (GSA-056-019).

¹ S.H. Enterprises’ contract period for GSA-056-019 commenced on November 8, 2019 and is set to last for three years with the option to renew for two additional years. Exhibit F.

In assessing the appropriate remedy for this violation, we must hone in on the purpose and policies of Guam's Procurement law, which were implemented 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, to ensure the quality and integrity of the procurement system, etc. Clearly, S.H. Enterprises violation of the prohibition against favors to the government chips away and negates the public's trust in the procurement system.

Based on the foregoing, Basil respectfully requests the following:

1. That this protest be granted;
2. That GSA terminate its contact with S.H. Enterprises and reissue the Invitation For Bid for the Nutrition Services for the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program, Congregate Meals and Home-Delivered Components;
3. That GSA debar or suspend S.H. Enterprises from being a government contractor; and
4. For any other relief available to Basil under Guam law.

Sincerely,

CAMACHO CALVO LAW GROUP LLC



Geri E. Diaz

Enclosures(s): See Exhibits A to F.

GED'abm
066987-00104.122259

EXHIBIT A

HAPA AQA
IT'S FRIDAY



GUAMPEN.COM
GUAM'S COMPLETE SOURCE

Pacific Daily News

©2020 GUAM PUBLICATIONS, INC. VOL. 51 NO. 357

JANUARY 24, 2020

PART OF THE USA TODAY NETWORK

War claims office opens today

Iaidee Eugenio Gilbert
Pacific Daily News
USA TODAY NETWORK

World War II survivors with adjudicated claims can present their documents to officials at the former Habotan building in Tamuning today, and they could start receiving compensation next week, according to the governor.

The Guam Department of Administration will open the war claims processing center at 9 a.m. today, and claims will be paid with nearly \$14 million in local funds.

At the same time, Guam officials are now preparing a petition to the federal government to expand the 2016 World War II Loyalty Recognition Act so that more war survivors can file claims.

"It is a great day for our people of Guam, our manamko," Gov. Lou Leon Guerrero said, moments before signing on Thursday a memorandum of agreement with the U.S. Treasury.

The agreement clears the path for the processing of adjudicated war claims payments.

The U.S. Treasury signed the agreement Wednesday, Washing-

ton, D.C. time or early Thursday, Guam time.

This comes nearly 76 years since the liberation of Guam from Japanese occupation during the war, and three weeks after the governor signed the local war claims payment bill that Speaker Tina Muña Barnes, Sen. Amanda Shelton and

See WAR CLAIMS, Page 4

Man injured in Maite



Guam Fire Department personnel treat a wounded man as Guam Police department officers attempt to gather other information at the site of the former Lemai Cafe in Maite on Thursday. THICK CRUZ/PHOTO

Social Security benefits case under advisement

Jerick Sablan
Pacific Daily News
USA TODAY NETWORK

Guam resident Katrina Schaller lives with a permanent disability, but she is unable to receive support payments under the federal Supplemental Security Income program.

Her twin sister, Leslie Schaller, suffers from the same debilitating genetic disorder - myotonic dystrophy, but receives about \$800 a month in SSI because she lives in Pennsylvania.

U.S. District Court of Guam Chief Judge Frances Tydingco-Ga-

See SOCIAL SECURITY, Page 4

Guam's Best



Happy Honda **NEW YEAR**

SO DOWN • NO PAYMENT FOR 90 DAYS



triple@guam.com

Local

War claims

Continued from Page 1

Sen. Wil Castro introduced.

"Getting to this point wasn't easy and our work isn't over, but we are now beginning to heal old wounds and honor our Greatest Generation. And we say to those still alive to hear it, your long wait is over," the governor said.

With many of the claims so far adjudicated granting \$10,000 and \$12,000 each, GovGuam could end up making advance payments to about 1,400 still-living war survivors.

More than 3,630 war survivors and their heirs filed war claims, which could total \$40 million.

Most of them would be paid once Del. Mike San Nicolas' H.R. 1365 passes the Senate and is signed by President Trump. San Nicolas said the Senate could pass it "within a few weeks."

The governor and the speaker said they will continue to advocate for the passage and signing of San Nicolas' bill. The governor thanked all the former delegates whom she said "paved the road and made our journey a lot easier so that we can get to where we are today."

Processing begins Jan. 24

"We are trying to make the process as simple as possible," the governor said at the Thursday signing ceremony, with Lt. Gov. Josh Tenorio, senators and Cabinet members in attendance.

What war survivors need to bring to the processing center:

- † The letter they received from the Foreign Claims Settlement Commission stating they are entitled to receive monetary compensation;

- † A government-issued photo ID;

- † At the war claims processing center, survivors will be asked to sign two documents, authorizing Treasury to release the survivors' informa-



Gov. Lou Leon Guerrero signs a memorandum of agreement with the U.S. Treasury on Thursday, paving the way for GovGuam to start processing the payment of adjudicated war claims by still-living World War II survivors using nearly \$14 million in local funds, while other officials applaud. Also in the photo are Lt. Gov. Josh Tenorio, senators led by Speaker Tina Muna Barnes, the governor's chief of staff Tony Babauta, and press secretary Krystal Pado-San Agustin. HAIDEE EUGENIO GILBERT/PDW

tion to GovGuam, and assigning their claim to GovGuam;

† Then they need to wait for a notification from GovGuam that their war claims payment check is ready.

Tony Babauta, the governor's chief of staff, said at the end of each day, the Department of Administration will electronically transmit to Treasury the documents from the war survivors.

They are password-protected to ensure privacy and confidentiality of war survivors' information.

Babauta said GovGuam anticipates the Treas-

ury will respond within three to four days, after verifying the claims that GovGuam collected.

GovGuam could start getting verification from the Treasury by Wednesday or Thursday next week, he said.

Babauta said the war claims processing center will be open 9 a.m. to 4 p.m., Monday to Friday. However, it will also be open on Saturday, Jan. 25, to accommodate more survivors.

Those with questions and concerns about the local war claims processing program are encouraged to call 482-0792 or 482-8931 or visit war-claims.guam.gov, officials said.

Petition for more war claims

The speaker's office on Thursday said there is now a draft petition to ask Congress to amend the 2016 law that allows for the payment of war claims, so that more of Guam's war survivors can still file claims.

Some people either missed the June 20, 2018 war claims filing deadline or were not previously aware of a war claims program.

The speaker said she would leave no stone unturned so that all war survivors could be compensated.

Payment of war claims using Section 30 funds were supposed to begin in fiscal 2019, but there was a technical flaw in the 2016 law that San Nicolas is seeking to fix through H.R. 1365.

Once San Nicolas' bill becomes law, it would allow U.S. Treasury to start releasing payments to Guam's war survivors and certain heirs using more than \$20 million in Section 30 funds that are already available. More Section 30 funds will be put in the war claims funding towards the end of fiscal 2020.

Adelup had said that once San Nicolas' H.R. 1365 passes the Senate and is enacted into law, then a portion of that funding would cover the GovGuam funding used to advance the payment of war claims to still-living war survivors.

Social Security

Continued from Page 1

Tatewood heard arguments in the lawsuit against the Social Security Administration over the inability of Guam residents to receive certain benefits. The judge took the matter under advisement.

The failure to provide benefits to people on Guam with disabilities violates the Organic Act and also the equal protection clauses of the Constitution, the lawsuit states.

Residents of the Commonwealth of the Northern Mariana Islands are eligible for SSI payments, because the benefit is included in the CNMI covenant with the United States.

But residents of Puerto Rico, Guam, and the U.S. Virgin Islands were intentionally excluded from the SSI program, which started in 1972.

"Katrina is denied eligibility for federal SSI benefits solely because she lives on Guam, rather than in any of the 50 states, the District of Columbia or the nearby territory of the CNMI," her lawsuit states.

The lawsuit notes Katrina Schaller received the benefits when she lived with her mother in Pennsylvania. "But when she moved to Guam to be with family upon her mother's death, Katrina's SSI benefits were cut off."

The lawsuit states that Leslie Schaller also wants to travel to Guam to see her sisters, "but she cannot do so for more than 30 days for fear of losing access to the SSI benefits necessary for her support."

The lawsuit asks the court to find that provisions of the SSI law discriminate based on status as a Guam resident and are unconstitutional, and to prevent the Social Security Administration from enforcing those provisions.

Attorney Mike Williams, who represents Schaller, said the twin sisters are being treated differently just because of where one of them lives.

Leslie Schaller is able to live more independently because she has SSI benefits.

Williams said Katrina Schaller would be a ward of the state if it wasn't for her family support on Guam.

He said the twin sisters haven't seen each other

for a decade, and Leslie Schaller would like to visit, but she's scared she'll lose her benefits.

Williams argued that the sisters should be treated the same by the federal government, and it's unconstitutional to treat one differently because she lives in a territory.

He said Katrina Schaller is sick and is being deprived of resources.

U.S. Department of Justice Attorney Michael Zee argued that it was up to Congress to make policy decisions, and not the court.

Congress created the law for the SSI benefits and only included the 50 states and the District of Columbia.

The CNMI is included in the benefits because it was able to negotiate it in when making the covenant with the U.S., he said.

Williams argued that the court has the power to address whether his client is being discriminated against in violation of the U.S. Constitution.

After about an hour and a half of arguments, Tydingco-Gatewood said she would take the matter under advisement and issue a decision later.

EXHIBIT B



**CAMACHO
CALVO**
LAW FIRM, P.C.

C. Roque

01/24/20

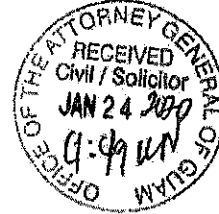
4:30



January 24, 2020

VIA HAND DELIVERY

OFFICE OF THE GOVERNOR OF GUAM
Ricardo J. Bordallo Complex
513 West Marine Corps Drive
Hagåtña, Guam 96910



RCUD AT CENTRAL FILE
JAN 24 '20 PM 4:18

Elaine Tajalle

Re: Freedom of Information Act Request

To the Honorable Governor Lourdes Leon Guerrero:

In accordance with the Freedom of Information Act (5 GCA § 10103), I hereby request the following documents:

The full, complete and entire file relating to and or discussing the use of the former Hakubotan building in Tamuning to the Government of Guam for use as the War Claims Processing Center. The information should include, but is not limited to, documentation of the following:

1. Authorization from either Hui Sook Min or SH Enterprises to the Government of Guam or the Guam Department of Administration to utilize this building for war claims services;
2. The terms and the conditions of the agreement between Hui Sook Min or SH Enterprises and the Government of Guam or the Guam Department of Administration for use of this building for war claims services;
3. The goods and services provided by Hui Sook Min or SH Enterprises to the Government of Guam or the Guam Department of Administration related to the use of this building for war claims services;
4. Any agreement between Hui Sook Min or SH Enterprises and the Government of Guam or the Guam Department of Administration memorializing the cost and fees to utilize this building for war claims services; and
5. Any and all written communication, including emails, which discuss or confirm Hui Sook Min's or SH Enterprises' agreement to allow the Government of Guam or the Guam Department of Administration to utilize this building for the War Claims Processing Center.

COPY

EXHIBIT C

COPY

S.H. Enterprises, Inc.
190 Chalan San Antonio Building
Tamuning, Guam 96913

January 22, 2020

Ms. Lou A. Leon Guerrero
Honorable Governor of Guam
C/O Jon Calvo, Deputy Chief of Staff
and Jesse Garcia, Deputy Director DPW
Governor's Complex
Hagatna, Guam 96910

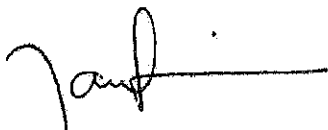
Dear Honorable Governor,

It was a pleasure meeting with your team on the availability of the former Hakubotan building and facility. After understanding the temporary need to setup a space for the Government of Guam's war claims program, it is our deepest honor to donate an unused section of the building for this purpose.

As longtime residents of Guam, we recognize how important this initiative is to our Manamko' and we are pleased to play a small role in this process for our island community.

The nature of this donation includes 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. The space may be available until Saturday, February 8, 2020.

Thank you for your time and leadership.



TAE MIN
President
S.H. Enterprises, Inc.

RECEIVED
J. Min
1/22/2020

EXHIBIT D

GSA GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)

Government of Guam

590 South Marine Drive, Ste. 219 ITC Bldg., Tamuning Guam 96913

Tel: 475-1713 * Telefax: 472-4217; 475-1716; 475-1727

Accountability * Impartiality * Competence * Openness * Value

INVITATION FOR BID NO.: GSA-056-19

DESCRIPTION:

**NUTRITION SERVICES FOR THE COMPREHENSIVE MANAGEMENT, OPERATIONS,
AND MAINTENANCE OF THE ELDERLY NUTRITION PROGRAM,
CONGREGATE MEALS AND HOME-DELIVERED MEALS COMPONENTS**

SPECIAL REMINDER TO PROSPECTIVE BIDDERS

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and Conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid envelope, in duplicate, at the date and time for bid opening.

- (X) **BID GUARANTEE (15% of Bid Amount) May be in the form of;**
Reference Page 27 Instruction for Bonding & Page 28, #11 on the General Terms and Conditions
- a. Cashier's Check or Certified Check
 - b. Letter of Credit
 - c. Surety Bond – Valid only if accompanied by:
 - 1. Current Certificate of Authority issued by the Insurance Commissioner;
 - 2. Power of Attorney issued by the Surety to the Resident General Agent;
 - 3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.
- (X) **STATEMENT OF QUALIFICATIONS**
- () **BROCHURES/DESCRIPTIVE LITERATURE;**
- (X) **AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSION**
- a. Date of signature of the person authorized to sign the bid and the notary date must be the same.
- (X) **OTHER REQUIREMENTS:**
Non-Collusion Affidavit, D.O.L. Wage Determination Affidavit, Restriction against Sexual Offenders Affidavit, No Kickbacks or Gratuities Affidavit and Ethical Standards Affidavit, and Affidavit re Contingent Fees, Current Business License relating to this bid.

This reminder must be signed and returned in the bid envelope together with the bid. Failure to comply with the above requirements may be cause for disqualification and rejection of the bid.

On this 8th day of October, 2019, I, Hui Sook Min,

authorized representative of SH Enterprises, Inc. acknowledge receipt of this special reminder to prospective bidders with the above referenced IFB.


Bidder Representative's Signature

EXHIBIT E

AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSIONS

CITY OF Tamuning)
) ss.
 ISLAND OF GUAM)

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the offeror and that *[please check only one]*:

The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.


The offeror is a corporation, partnership, joint venture, or association known as SH Enterprises, Inc. *[please state name of offeror company]*, and the persons, companies, partners, or joint venturers who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
<u>Tae Hong Min</u>	<u>P.O.Box 9730</u>	<u>50%</u>
<u>Hui Sook Min</u>	<u>Tamuning, Guam 96931</u>	<u>50%</u>
	<u>Same as above</u>	

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
<u>N/A</u>		

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.


 Signature of one of the following:
 Offeror, if the offeror is an individual; Partner, if the offeror is a partnership; Officer, if the offeror is a corporation.

Subscribed and sworn to before me
 this 9th day of October, 2019.


 NOTARY PUBLIC
 My commission expires: _____

MICHAEL T. MEBOFNA
 Notary Public
 In and for Guam U.S.A.
 My Commission Expires: June 25, 2022
 Community First Guam Federal Credit Union
 238 Archbishop Flores St., Suite 102
 Hagåtña, GU 96910

AFFIDAVIT RE NO GRATUITIES or KICKBACKS

CITY OF Tamuning)
) ss.
ISLAND OF GUAM)

Hui Sook Min [state name of affiant signing below], being first duly sworn, deposes and says that:

1. The name of the offering firm or individual is [state name of Offeror Company] SH Enterprises, Inc. Affiant is Vice-President [state one of the following: the offeror, a partner of the offeror, an officer of the offeror] making the foregoing identified bid or proposal.

2. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers, representatives, agents, subcontractors, or employees have violated, are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(e). Further, affiant promises, on behalf of offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4 § 11107(e).

3. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers, representatives, agents, subcontractors, or employees have offered, given or agreed to give, any government of Guam employee or former government employee, any payment, gift, kickback, gratuity or offer of employment in connection with the offeror's proposal.

4. I make these statements on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.



Signature of one of the following:

Offeror, if the offeror is an individual; Partner, if the offeror is a partnership; Officer, if the offeror is a corporation.

Subscribed and sworn to before me

this 9th day of October, 2019.

NOTARY PUBLIC

My commission expires _____




AFFIDAVIT RE ETHICAL STANDARDS

CITY OF Tamuning)
) ss.
ISLAND OF GUAM)

Hui Sook Min (state name of affiant signing below), being first duly sworn, deposes and says that:

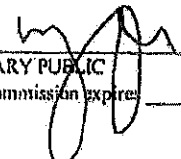
The affiant is Vice-President (state one of the following: the offeror, a partner of the offeror, an officer of the offeror) making the foregoing identified bid or proposal. To the best of affiant's knowledge, neither affiant nor any officers, representatives, agents, subcontractors or employees of offeror have knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5, Article 11. Further, affiant promises that neither he or she, nor any officer, representative, agent, subcontractor, or employee of offeror will knowingly influence any government of Guam employee to breach any ethical standards set forth in 5 GCA Chapter 5, Article 11. These statements are made pursuant to 2 GAR Division 4 § 11103(b).



Signature of one of the following:

Offeror, if the offeror is an individual; Partner, if the offeror is a partnership; Officer, if the offeror is a corporation.

Subscribed and sworn to before me
this 9th day of October, 2019.



NOTARY PUBLIC
My commission expires: _____

MICHAEL T. MEDINA
Notary Public
in and for Guam U.S.A.
My Commission Expires: June 25, 2022
Community First Guam Federal Credit Union
238 Archbishop Flores St., Suite 102
Hagåtña, GU 96910

EXHIBIT F

GENERAL SERVICE AGENCY
(Ahensian Setbision Hinrat)
Government of Guam
590 S. Marine Corps Drive, Suite 210 Tamuning, Guam 96913
Tel: 477-1707-10 Fax: 472-4217 / 475-1716/27

Accountability * Impartiality * Competence * Openness * Value

BID STATUS

November 08, 2019

BASIL FOOD INDUSTRIAL SERVICES
Attn: Betty Ann Dela Cruz, Program Manager
530 West O'Brien Drive
Hagatna, Guam 96932
Tel: (671) 475-8888 / Fax: (671) 475-0088
Email: bettybazu@yahoo.com

BID INVITATION NO.: GSA-056-19

OPENING DATE: October 24, 2019

Nutrition Services for the Comprehensive Management, Operations and Maintenance of the Elderly Nutrition Program, Congregate Meals and Home-Delivered Components.

The following is the result of the above-mentioned bid. Refer to the items checked below.

Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds;
- Change of specifications; or
- Insufficient number of bidders.

Rejected due to:

- Late submission of bid;
- No bid security or insufficient bid security;
- Not meeting the delivery requirement as stated in the IFB;
- Non-conformance with requirement of IFB: (See Remarks)
- High price
- Others

REMARKS: _____

Bid recommended for award:

SH EN TERPRISE, INC. IN THE TOTAL AMOUNT OF \$3,789,211.00

REMARKS: Thank you for your participation with this bid. Please send your authorized representative to pickup your original bid status and cashier check/bid bond or Standby Letter of Credit.

 11-8-19
CLAUDIA S. ACFALLE
Chief Procurement Officer

Please Print	
ACKNOWLEDGEMENT COPY (Re-fax to GSA)	
Received By:	<u>WEE HAN SANCHEZ</u>
Date:	<u>11-8-19</u>
Company Name:	<u>Basil Food Services</u>
Fax to: 475-1727 or 472-4217	
E-mail to: gsaprocurement@gsadog.guam.gov	

INVITATION FOR BID

ISSUING OFFICE:

GENERAL SERVICES AGENCY
GOVERNMENT OF GUAM
590 SOUTH MARINE DRIVE, SUITE 219
TAMUNING, GUAM 96913

Power and K 9/25/19
CLAUDIA S. ACFALLE
Chief Procurement Officer

DATE ISSUED: Sept. 25, 2019

BID INVITATION NO: GSA-056-19

BID FOR: NUTRITION SERVICES FOR THE COMPREHENSIVE MANAGEMENT, OPERATIONS, AND MAINTENANCE OF THE ELDERLY NUTRITION PROGRAM, CONGREGATE MEALS AND HOME-DELIVERED MEALS COMPONENTS

SPECIFICATION: SEE ATTACHED

DESTINATION: DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES

REQUIRED DELIVERY DATE: The term of this contract shall commence upon signing of contract for Three (3) Years with the option to renew for two (2) additional fiscal years. Renewal options will be one fiscal year at a time, subject to funding availability.

INSTRUCTION TO BIDDERS:

INDICATE WHETHER: INDIVIDUAL PARTNERSHIP CORPORATION

INCORPORATED IN: July 10, 1995

This bid shall be submitted in duplicate and sealed to the issuing office above no later than (Time) 10:00 AM, Date: 10/10/2019, and shall be publicly opened. Bid submitted after the time and date specified above shall be rejected. See attached General Terms and Conditions, and Sealed Bid Solicitation for details.

The undersigned offers and agrees to furnish within the time specified, the articles and services at the price stated opposite the respective items listed on the schedule provided, unless otherwise specified by the bidder. In consideration to the expense of the Government in opening, tabulating, and evaluating this and other bids, and other considerations, the undersigned agrees that this bid remain firm and irrevocable within 90 calendar days from the date opening to supply any or all the items which prices are quoted.

NAME AND ADDRESS OF BIDDER:

SH Enterprises, Inc.
P.O. Box 9730
Tamuning, Guam 96931

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS BID:

Hui Bok Min
Hui Bok Min / Vice-President

AWARD: CONTRACT NO.: GSA-056-19 AMOUNT: \$3,789,211.00 DATE: 11-08-19

ITEM NO(S).

AWARDED: 1-1 Nutrition Services for the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program, Congregate Meals and Home-Delivered Components.

CONTRACTING OFFICER:

Claudia S. Acfalle 11-08-19
CLAUDIA S. ACFALLE
Chief Procurement Officer

NAME AND ADDRESS OF CONTRACTOR:

SH ENTERPRISES, INC.
P.O. BOX 9730
TAMUNING, GUAM 96931

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS CONTRACT:

Janice 11-8-19

EXHIBIT G

**GOVERNMENT OF GUAM
GENERAL TERMS AND CONDITIONS**

SEALED BID SOLICITATION AND AWARD

Only those Boxes checked below are applicable to this bid.

1. **AUTHORITY:** This solicitation is issued subject to all the provision of the Guam Procurement Act (5GCA, Chapter 5) and the Guam Procurement Regulations (copies of both are available at the Office of the Comptroller of Laws, Department of Law, copies available for inspection at General Services Agency). It requires all parties involved in the Preparation, negotiation, performance, or administration of contracts to act in good faith.
2. **GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and conditions for the bidder to provide the Government of Guam (Government) with specified services or with materials, supplies or equipment completely assembled and ready for use.
3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
4. **LICENSING:** Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
5. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations.
6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:**
Bidders shall comply with all specifications and other requirements of the Solicitation.
7. **"ALL OR NONE" BIDS: NOTE:** By checking this item, the Government is requesting all of the bid items to be bid or none at all. The Government will not award on an itemized basis.
8. **INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices in his bid were derived at without collusion, and acknowledge that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 5651 of that of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 5651 of the Government code.
9. **BIDDER'S PRICE:** The Government will consider not more than two (2) (Basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
10. **BID ENVELOPE:** Envelope shall be sealed and marked with the bidder's name, Bid number, time, date and place of Bid Opening.
11. **BID GUARANTEE REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by the Government pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier's Check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Treasurer of Guam in the amount of fifteen percent (15%) of his highest total bid offer. The Bid Bond must be submitted on Government Standard Form BB-1 (copy enclosed). Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the bid or fails to enter into contract within the prescribed time, such Bid guarantee will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier's check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid. Pursuant to 5 GCA § 5212, all competitive sealed bidding for the procurement of supplies or services exceeding \$25,000.00 a 15% Bid Security of the total bid price must accompany the bid package. The bid bond, Letter of Credit, Certified Check or Cashier's Check will serve as Bid Security for this procurement.
12. **PERFORMANCE GUARANTEE:** Bidders who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government of Guam. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Section 41 of these General Terms and Conditions.
13. **SURETY BONDS:** Bid and Bid Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The surety must be an Insurance Company, authorized by the government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.
14. **COMPETENCY OF BIDDERS:** Bids will be considered only from bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.
15. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The Chief Procurement Officer reserves the right for securing from bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions. (2 GAR, Div. 4 § 3116)

29. **SAFETY INSPECTION:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.
30. **GUARANTEE:**
- a) **Guarantee of Vehicle Type of Equipment:**
The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune ups (change of spark plugs, contact points and condensers) and lubrication (change of engine and transmission oil). All parts and labor shall be at the expense of the bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced, or adjusted within six (6) working days after notice from the Government and without cost to the Government. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.
- b) **Guarantee of Other Type of Equipment:**
The successful bidder shall guarantee all other types of equipment offered, except those mentioned in 30a, above, against defective parts, workmanship, and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to the Government. Repairs, adjustments or replacements of defective parts shall be completed by the contractor within six (6) working days after notice from the Government.
- (c) **Compliance with this Section is a condition of this Bid.**
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 on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.
32. **REPRESENTATION REGARDING CONTINGENT FEES:** The contractor represents that it has not retained a person to solicit or secure a Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business (GPR Section 11-207).
33. **EQUAL EMPLOYMENT OPPORTUNITY:** Contractors shall not discriminate against any employee or applicant of employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.
34. **COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standard, provisions, and stipulations of all pertinent Federal and/or local laws, rules, and regulations relative to the performance of this contract and the furnishing of goods.
35. **CHANGE ORDER:** Any order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-03.1 of the Guam Procurement Regulations.
36. **STOP WORK ORDER:** Any stop work order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-04.1 of the Guam Procurement Regulations.
37. **CANCELLATION OF INVITATION FOR BIDS OR REQUEST FOR PROPOSALS:** Any Invitation for Bid may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the Territory in accordance with regulations promulgated by the Policy Office. The reasons therefor shall be made part of the contract file.
38. **TIME FOR COMPLETION:** It is hereby understood and mutually agreed by and between the contractor and the Government that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from the date Purchase Order is acknowledged by vendor), then the contractor is in default. Defaults will be treated subject to and in accordance with the provisions of 2 GAR, Div. 4 § 6101(8).
39. **JUSTIFICATION OF DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within the time specified. If the bidder is not able to meet the specified delivery date, he is required to notify the Chief Procurement Officer of such delay. Notification shall be in writing and shall be received by the Chief Procurement Officer at least twenty-four (24) hours before the specified delivery date. Notification of delay shall include an explanation of the causes and reasons for the delay including statement(s) from supplier or shipping company causing the delay. The Government reserves the right to reject delay justification if, in the opinion of the Chief Procurement Officer, such justification is not adequate.

- [X] 40. **SERVICE-DISABLED VETERAN OWNED BUSINESS PREFERENCE:** Bidding is subject to the policy in favor of Service-Disabled Veteran Owned Business as defined in 5 GCA sections 5011 and 5012.
- [X] 41. **LIQUIDATED DAMAGES:** When the contractor is given notice of delay or nonperformance as specified in Paragraph 1 (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonable obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph 39 (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the territory. The contractor remains liable for damages caused other than by delay. 2 GAR, Div. 4 §6101(d).
- [X] 42. **PHYSICAL LIABILITY:** If it becomes necessary for the Vendor, either as principal, agent or employee, to enter upon the premises or property of the Government of Guam in order to construct, erect, inspect, make delivery or remove property hereunder, the Vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or property during the progress of the work herein covered, and to be responsible for, and to indemnify and save harmless the Government of Guam from the payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such work, and fines, penalties and loss incurred for or by reasons of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the Government of Guam against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or his employees and agents of the services covered by the contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Government of Guam when required.
- [X] 43. Contract will be cancelled if funds not appropriated or insufficient, and that government will timely inform contractor. 2 GAR, Div.4 §3121(e) (1) (C) and 2 GAR, Div.4 § 3121(e)(1)(D).
- [] 44. If cancelled, contractor will be reimbursed unamortized reasonably incurred non-recurring costs. 2 GAR, Div.4 § 3121(e) (1) (G).
- [X] 45. **CONTACT FOR CONTRACT ADMINISTRATION:** If your firm receives a contract as a result of this Solicitation, please designate a person whom we may contact for prompt administration.

Name: Hui Sook Min

Title: Vice-President /
Program Supervisor

Address: P.O.Box 9730

Telephone: 777-2805 / 649-0521

Tamuning, Guam 96931

EXHIBIT H



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)

Government of Guam

590 South Marine Drive, Ste. 219 ITC Bldg., Tamuning Guam 96913

Tel: 475-1713 * Telefax: 472-4217; 475-1716; 475-1727

Accountability * Impartiality * Competence * Openness * Value

INVITATION FOR BID NO.: GSA-056-19

DESCRIPTION:

NUTRITION SERVICES FOR THE COMPREHENSIVE MANAGEMENT, OPERATIONS, AND MAINTENANCE OF THE ELDERLY NUTRITION PROGRAM, CONGREGATE MEALS AND HOME-DELIVERED MEALS COMPONENTS

SPECIAL REMINDER TO PROSPECTIVE BIDDERS

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and Conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid envelope, in duplicate, at the date and time for bid opening.

- (X) BID GUARANTEE (15% of Bid Amount) May be in the form of; Reference Page 27 Instruction for Bonding & Page 28, #11 on the General Terms and Conditions
a. Cashier's Check or Certified Check
b. Letter of Credit
c. Surety Bond - Valid only if accompanied by:
1. Current Certificate of Authority issued by the Insurance Commissioner;
2. Power of Attorney issued by the Surety to the Resident General Agent;
3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.
(X) STATEMENT OF QUALIFICATIONS
() BROCHURES/DESCRIPTIVE LITERATURE;
(X) AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSION
a. Date of signature of the person authorized to sign the bid and the notary date must be the same.
(X) OTHER REQUIREMENTS:
Non-Collusion Affidavit, D.O.L. Wage Determination Affidavit, Restriction against Sexual Offenders Affidavit, No Kickbacks or Gratuities Affidavit and Ethical Standards Affidavit, and Affidavit re Contingent Fees, Current Business License relating to this bid.

This reminder must be signed and returned in the bid envelope together with the bid. Failure to comply with the above requirements may be cause for disqualification and rejection of the bid.

On this 8th day of October, 2019, I, Hui Sook Min,

authorized representative of SH Enterprises, Inc. acknowledge receipt of this special reminder to prospective bidders with the above referenced IFB.

[Handwritten Signature]
Bidder Representative's Signature

EXHIBIT I

AFFIDAVIT RE NO GRATUITIES or KICKBACKS

CITY OF Tamuning)
) ss.
ISLAND OF GUAM)

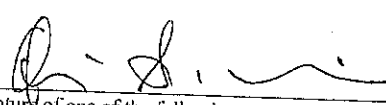
Hui Sook Min [state name of affiant signing below], being first duly sworn, deposes and says that:

1. The name of the offering firm or individual is [state name of Offeror Company] SH Enterprises, Inc.. Affiant is Vice-President [state one of the following: the offeror, a partner of the offeror, an officer of the offeror] making the foregoing identified bid or proposal.

2. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers, representatives, agents, subcontractors, or employees have violated, are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(e). Further, affiant promises, on behalf of offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4 § 11107(e).

3. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers, representatives, agents, subcontractors, or employees have offered, given or agreed to give, any government of Guam employee or former government employee, any payment, gift, kickback, gratuity or offer of employment in connection with the offeror's proposal.

4. I make these statements on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.



Signature of one of the following:
Offeror, if the offeror is an individual; Partner, if the offeror is a partnership; Officer, if the offeror is a corporation.

Subscribed and sworn to before me

this 9th day of October, 2019.

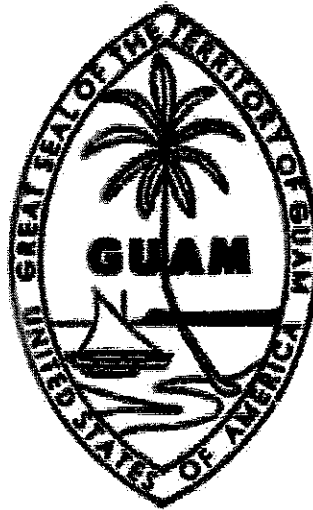
NOTARY PUBLIC
My commission expires _____

MICHAEL T. MEGOFNA
Notary Public
in and for Guam U.S.A.
My Commission Expires: June 25, 2022
Community First Guam Federal Credit Union
238 Archbishop Flores St., Suite 102
Hagatna, GU 96910

Basil SECOND Appeal (066987-00105.124654)
Re GSA-056-19

EXHIBIT J

**ADMINISTRATIVE
RULES
AND
REGULATIONS**



GSA

Procurement

Regulations

DEPARTMENT OF ADMINISTRATION
General Services Administration

PROCUREMENT REGULATIONS
Issued pursuant to P.L. 16-124
Filed with Legislative Secretary on Sept. 14, 1984
Effective November 1, 1984

Published by:
Office of the Attorney General
Charles H. Troutman
Compiler of Laws

- 9-202 Violations of Law Found Prior to Award
- 9-203 Ratification, Termination, or Cancellation of Contract to Comply with the Law
- 9-301 Interest
- 9-401 Waiver of Sovereign Immunity
- 9-402 Time Limitations on Actions

CHAPTER 10 COMPLIANCE WITH FEDERAL REQUIREMENTS
SECTION 10-101 Compliance with Federal Requirements

CHAPTER 11 ETHICS IN PUBLIC CONTRACTING
SECTION 11-10 Definitions

- 11-201 Standards of Conduct
- 11-202 General Standards of Ethical Conduct
- 11-203 Criminal Sanctions
- 11-204 Conflict of Interest
- 11-205 Disclosure of Benefit from Contract
- 11-206 Gratuities and Kickbacks
- 11-207 Contingent Fees
- 11-208 Employment Prohibitions and Restrictions
- 11-209 Use of Confidential Information
- 11-301 Civil and Administrative Remedies Against Employees Who Breach Ethical Standards (Reserved)
- 11-302 Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards
- 11-303 Recovery of Value Transferred or Received in Breach of Ethical Standards
- 11-401 Ethics Enforcement

APPENDIX A Regulations Governing Government of Guam Employees' Ethics in Public Contracting

11-205 DISCLOSURE OF BENEFIT FROM CONTRACT.

11-205.01 EMPLOYEE DISCLOSURE REQUIREMENTS (Reserved).

11-205.01.1 DEFINITIONAL CROSS-REFERENCE.

The term "Financial Interest" is defined in Section 1-106.40 (Definitions), of the Guam Procurement Regulations.

11-205.02 "BENEFIT" DEFINED (Reserved).

11-205.03 DISCLOSURE REQUIREMENT (Reserved).

11-206 GRATUITIES AND KICKBACKS.

(1) *Gratuities.* It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(2) *Kickbacks.* It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontract or order.

(3) *Contract Clause.* The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

This Section is quoted from Section 6980.6 of the Guam Procurement Act.

11-206.01 DEFINITIONAL CROSS-REFERENCE.

The following terms used in this Section are defined in the following Sections of the Guam Procurement Regulations which are quoted in Section 1-106 of these Regulations.

- (a) "gratuity," as defined in Section 1-106.41 (Definitions, Gratuity); and
- (b) "purchase request," as defined in Section 1-106.44 (Definitions, Purchase Request).

11-206.02 GRATUITIES PROHIBITION.

11-206.02.1 BREACH.

It is a breach of Section 11-206(1) (Gratuities and Kickbacks, Gratuities) of these Regulations:

- (a) for any person to offer, give, or agree to give any government employee or former government employee a gratuity or offer of employment; or
- (b) for any government employee or former employee to solicit, demand, accept, or agree to accept a gratuity or an offer of employment; provided that the gratuity or offer of employment is in relation to a particular matter in accordance with 11-206.02.2 of these regulations, and pertains to any programs requirement, contract, subcontract, or solicitation or proposal therefor.

11-206.02.2 RELATIONSHIP OF GRATUITY.

In addition, the gratuity or offer of employment must be made in relation to any proceeding or application, request for a ruling, determination, claim or controversy, or other particular matter, to constitute a breach, and in connection with any:

- (a) decision;
- (b) approval;
- (c) disapproval;
- (d) recommendation;
- (e) preparation of any part of a program requirement or a purchase request;
- (f) action to influence the content of any specifications or procurement standard;
- (g) rendering of advice;
- (h) investigation;
- (i) auditing; or
- (j) other advisory capacity.

11-206.02.3 FAMILY.

This prohibition extends to the giving of gratuities to anyone on the government employee's or former government employee's behalf such as a member of the employee's immediate family.

11-206.03 WHEN PROHIBITION AGAINST GRATUITIES NOT APPLICABLE.

Section 11-206(1) (Gratuities and Kickbacks, Gratuities) of these regulations does not prohibit:

- (a) the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any procurement or program requirement with the

- territory and is based upon a personal or family relationship;
- (b) the participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social, or fraternal organization, or from a non-profit educational, recreational, public service, or civic organization;
 - (c) acceptance only on current customary terms of finance of a loan from a bank or other financial institution for proper and usual activities of government employees, such as home mortgage loans; or
 - (d) acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other items under nominal value as described in Section 11-101.01.6 (Definitions, Gratuity) of this Chapter.

11-206.04 PAYMENT OF A KICKBACK.

The prohibition against kickbacks set forth in Section 11-206(2) (Gratuities and Kickbacks, Kickbacks) of these Regulations applies whether a kickback is made prior to or after the award of a territorial contract or order.

11-206.05 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 Section 11-206 (Gratuities and Kickbacks) of the Guam Procurement Regulations."

11-207 CONTINGENT FEES.

11-207.01 PROHIBITION AGAINST CONTINGENT FEES.

(1) *Contingent Fees.* It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a territorial contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(2) *Representation of Contractor.* Every person, before being awarded a territorial contract, shall represent, in writing, that such person has not retained anyone in violation

EXHIBIT K



EDWARD M. BIRN
Director (Direktot)

EDITH C. PANGELINAN
Deputy Director (Sigundo Direktot)

**DEPARTMENT OF
ADMINISTRATION**
DIPATTAMENTON ATMENESTRASION

GENERAL SERVICES AGENCY
(Ahensian Setbision Hinirat)

Telephone (Telifon): (671) 475-1707/1729 • Fax (Faks): (671) 472-4217/1727



LOURDES A. LEON GUERRERO
Governor (Maga'håga)

JOSHUA F. TENORIO
Lt. Governor (Sigundo Maga'låhi)

February 8, 2020

Memorandum

Ms. Geri Diaz
Camacho Calvo Law Group LLC
356 E. Marine Corps Drive, Suite 201
Hagatna, Guam 96910

RECEIVED
CAMACHO CALVO LAW GROUP LLC

Date: 2/12/2020 Time: 10:38am
 Hand Delivery Mail AM

Re: Protest dated February 7, 2020

We are in receipt of your memorandum dated February 7, 2020, in which you are protesting the award of GSA Bid No. 056-19 to SH Enterprises for perceived ethical violations. The basis of the protest is the donation of the use of the Hakubotan building for two (2) weeks to the government to allow for the processing of the War Claims. As such, you indicated that action was a violation of the ethical standard stated in the Guam Procurement Statute, and its rules regulations (5 GCA Section 5680(d) and 2 GARR Division 4 Section 11107(4)).

GSA Response: While your protest states 5 GCA Section 5601 for what is a gratuity, 5 GCA Section 5630(a) goes into further detail as to what would be an ethical violation for providing a gratuity.

5 GCA Section 5630(a)(b) defines what is a Gratuity and Kickback

(a)Gratuities. It shall be a breach of ethical standard for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity, or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or program standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement, or a contract or a subcontract; or to any solicitation or proposal thereof.

(b)Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to a prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for an award of a subcontractor or order.

Clearly, the donation by SH Enterprises did not meet the definition of a gratuity or kickback. There was no decision or approval, disapproval recommendation, preparation of any part of the program requirement or a purchase request, influencing 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.

Further, the Governor, by separate statute, is authorized to accept donations.


5 GCA Section 22408, it states:

The Governor is authorized to accept monetary donations, from any individuals or organizations, which shall be deposited in a separate fund by the Treasurer of Guam. Such donations shall upon authorization of the Governor, be used and expended in accordance with the terms and conditions upon which they were made. Nothing herein shall be constructed to prevent the Governor on behalf of the government of Guam from accepting donations of property from any individual or organization.

This statute allows the Governor of Guam to accept donations, provided it complies with the terms and conditions of it. That is what happened here.

As such, there was no violation of the procurement law, rules and regulations, or of the purchase order awarded to SH Enterprises.

Your protest is deemed to be without merit and therefore **DENIED**. You have the right to seek any administrative or judicial remedy authorized by law.


CLAUDIA S. ACFALLE
Chief Procurement Officer

Basil SECOND Appeal (066987-00105.124654)
Re GSA-056-19

EXHIBIT L

**SECTION 16.7
DRUG FREE WORKPLACE**

A. The Contractor shall, within 30 days after award:

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (2) Establish an ongoing drug-free awareness program to inform such employees about -

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will -

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Procurement Officer in writing within 10 days after receiving notice under subdivision (4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (1) through (6) of this clause.

B. The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

C. In addition to other remedies available to Department of Public Health and Social Services, the Contractor's failure to comply with the requirements of paragraph (B) or (C) of this clause may render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

**SECTION 16.8
DEBARMENT (GUAM AND FEDERAL)**

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.

B. **Federal Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110. The Contractor certifies that it and its principals: 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

2) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated above; and 4) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default. Contractor further warrants that it is not a party listed on the government wide exclusions in the System for Award Management (SAM), and will comply with the provisions of Subpart C of 2 CFR Part 1326, "Nonprocurement Debarment and Suspension," (published in the Federal Register on December 21, 2006, 71 FR 76573) which generally prohibits entities that have been debarred, suspended, or voluntarily excluded from participating in nonprocurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of federal financial assistance regarding transactions with other persons, including subrecipients and contractors. Contractor will provide a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transaction (Sub-Recipient), which is a material representation of fact. Submission of this certification is a pre-requisite for entering into this Agreement, imposed by Executive Order 12549, 28 CFR Part 67, Section 67.510.

SECTION 16.9 FEDERAL LOBBYING

The Contractor certifies, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of this Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Agreement or any Federal grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, or any Federal grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement. The Contractor certifies or affirms the truthfulness and accuracy of each statement of this certification and disclosure. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure.

SECTION 16.10 IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

By executing this contract, and any subcontracts, as appropriate, the Contractor and any subcontractors will be deemed to have stipulated as follows:

A. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

B. That the Contractor agrees to include or cause to be included the requirements of paragraph (A) of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

EXHIBIT M

SECTION 22. ADDITIONAL CONTRACT TERMS AND CONDITIONS:

- 22.1 **Ethical Standards.** 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 it has not knowingly influenced, and promises that it will not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.
- 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.
- 22.3 **Prohibition Against Contingent Fees.** The Bidder represents that it has not retained any person or agency upon an agreement or understanding for a percentage, commission, brokerage, or other contingent arrangements, except for retention of bona fide employees or bona fide established commercial selling agencies, to solicit or secure this Agreement or any other contract with the government of Guam or its agencies.
- 22.4 **Prohibition Against Employment of Sex Offenders.** Bidder warrants that no person providing services on behalf of the Bidder who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28 Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry shall work for his employer on the property of the government of Guam other than a public highway; and that if any person providing services on behalf of the Bidder is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense that as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, the employee will be immediately removed from working on the property of the government of Guam and that the Director of the DPHSS be informed of such within twenty-four (24) hours of such conviction.

Bidder, after notice from DPHSS, DSC of a violation of this provision, shall, within twenty-four (24) hours, take corrective action and shall report such action to DPHSS, DSC. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the Director of the DPHSS.

EXHIBIT N

AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSIONS

CITY OF Tamuning)
) ss.
 ISLAND OF GUAM)

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the offeror and that *[please check only one]*:

The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.

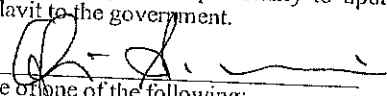
The offeror is a corporation, partnership, joint venture, or association known as SH Enterprises, Inc. *[please state name of offeror company]*, and the persons, companies, partners, or joint venturers who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
<u>Tae Hong Min</u>	<u>P.O. Box 9730</u>	<u>50%</u>
<u>Hui Sook Min</u>	<u>Tamuning, Guam 96931</u>	<u>50%</u>
	<u>Same as above</u>	


B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
<u>N/A</u>		

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.


 Signature of one of the following:
 Offeror, if the offeror is an individual; Partner, if the offeror is a partnership; Officer, if the offeror is a corporation.

Subscribed and sworn to before me
 this 9th day of October, 2019.


 NOTARY PUBLIC
 My commission expires: _____

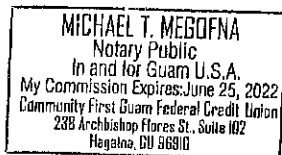


EXHIBIT C

Decision

OPA-PA-19-011 & OPA-PA-20-003

11 December 2019

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



FAX

To:	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability	
	Ms. Sandra Cruz Miller, Esq., Assistant Deputy Attorney General Office of the Attorney General of Guam 590 S. Marine Corps Drive, Suite 706 Tamuning, Guam, 96913 Fax: (671) 472-2493	Pages:	19 (including cover page)	
CC:	Geri E. Diaz, Esq. (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	Date:	December 11, 2020	
	Vanessa L. Williams, Esq. (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@vlwillimslaw.com	Phone:	(671) 475-0390 x. 211	
		Fax:	(671) 472-7951	

Re: OPA-PA-19-011 and 20-003 Decision

- 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

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.



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

In the Appeal of) **Appeal No: OPA-PA-19-011**
) **Appeal No: OPA-PA-20-003**
)
Basil Food Industrial Services Corp.,) **DECISION**
)
Appellant.)
_____)

I. INTRODUCTION

This is the Decision of the Public Auditor, pursuant to 2 G.A.R. §12110, for Consolidated Appeals OPA-PA-19-011 and 20-003. The consolidated appeal was brought by Appellant, BASIL FOOD INDUSTRIAL SERVICES CORPORATION, (Hereinafter referred to as “BASIL”) on protest denials by the Chief Procurement Officer (CPO) in Invitation for Bid (IFB) No. GSA-056-19, the Department of Public Health and Social Services’ (“DPHSS”) procurement of meal services for the elderly (Hereinafter referred to as the “*Manâmkû*’ meals IFB”). The Appeal was heard on October 5, 6, and 7, 2020 before Public Auditor Benjamin J. F. Cruz. Geri E. Diaz, Esq. appeared on behalf of the Appellant, BASIL. Assistant Attorney General Sandra Cruz Miller, Esq., appeared on behalf of Purchasing Agency, GENERAL SERVICES AGENCY (Hereinafter referred to as “GSA”). Vanessa Williams, Esq. appeared on behalf of Interested Party, SH ENTERPRISES, INC. (Hereinafter referred to as “SH”).

1 **II. JURISDICTION: STANDARD OF REVIEW**

2 The decision of the Public Auditor under appeal is as authorized by 5 G.C.A. §5703.ⁱ The
3 determination of an issue, the findings of fact, and the decision of the Public Auditor are as stated
4 in 5 G.C.A. §5704.ⁱⁱ

6 **III. FINDINGS OF FACT**

7 In reaching this Decision, the Public Auditor reviews and determines *de novo* any matter
8 properly submitted. 2 G.A.R. §12103(a).¹ From the procurement record, documents submitted by
9 the parties, testimony, and arguments made during the hearings held on October 5, 6, and 7, 2020,
10 the Public Auditor makes the following findings of fact:

11
12 **A. PRIOR PROCUREMENT HISTORY: BASIL AND GSA IN A NEARLY**
13 **4-YEAR PROTRACTED LITIGATION OVER TERMINATION OF ITS**
14 **CONTRACT BECAUSE OF BASIL’S “D” AND “C” RATINGS; 8-**
15 **MONTH EMERGENCY PROCUREMENTS PRIOR TO THE**
16 **MANÁMKU’ MEALS IFB**

17 While BASIL and SH have had food service contracts with the government stretching back
18 to 2014, both have had issues with grades received from DPHSS after food establishment
19 inspections. In June 2016, BASIL’s contract to provide food services to the elderly was terminated
20 when it received a “D” rating in a series of food establishment inspections by the DPHSS’
21 Environmental Division.² BASIL protested the termination, appealed the protest and lost, received

22 ¹ A finding of fact by the Public Auditor is final and conclusive unless arbitrary, capricious, fraudulent,
23 clearly erroneous, or contrary to law. 5 G.C.A. §5704(a) (2005); *Basil Food Indus. Serv. Corp. v. Gen. Serv.*
24 *Agency*, 2019 Guam 29. Factual issues decided by the Public Auditor “are ordinarily not to be relitigated,”
25 *see id.* ¶ 8; *Teleguam Holdings LLC v. Guam*, 2018 Guam 5 ¶ 32. Such findings, however, may be “clearly
26 erroneous” and therefore subject to reversal if unsupported by substantial evidence. Substantial evidence is
27 more than a mere scintilla, but less than a preponderance; it means such relevant evidence as a reasonable
28 mind might accept as adequate to support a conclusion. *See* 2019 Guam 29 (citations omitted).

² DPHSS grades food establishments according to the number of demerits recorded at inspections for food
found to be unwholesome or adulterated, or for employees with communicable disease found to be working
at the food establishment. *See* 10 G.C.A. §§23102 (inspections to detect unwholesome or adulterated food),
23103 (prohibition on employees with communicable disease at food establishments), 23106 (ratings: “A” –
10 or fewer demerits; “B” – 11 to 20 demerits; “C” – 21 to 40 demerits; “D” more than 40 demerits).

1 an adverse judgment from the Superior Court, then appealed to the Guam Supreme Court, where it
2 lost. 2019 Guam 29.

3
4 SH received a “C” rating and a Letter of Warning from DPHSS after its food establishment
5 inspection on April 3, 2019. At the time, SH was performing under a DPHSS emergency
6 procurement for April 2019 meal services for the elderly (the “*Manâmkû*’ meals emergency
7 procurement”). Section 12.9 of the *Manâmkû*’ meals emergency procurement contract provided that
8 it could be terminated by DPHSS in the event of a “C” rating.³ Although DPHSS inspected SH,
9 neither it nor the CPO took steps to terminate the *Manâmkû*’ meals emergency procurement contract.
10 On April 5, 2019, SH withdrew from the *Manâmkû*’ meals emergency procurement contract due to
11 instances of late food deliveries, which GSA allowed. GSA also assessed penalties against SH for
12 the late deliveries.
13

14 BASIL reported to the CPO about SH’s “C” rating on that same day, April 5, 2019. The
15 CPO testified that she was aware of the “C” rating only after BASIL reported it. After SH withdrew,
16 the CPO issued a purchase order to BASIL under the emergency procurement, and BASIL continued
17 to provide meal services on an emergency procurement through November 2019.
18

19 **B. THE MANÂMKU’ MEALS IFB**

20 On September 25, 2019, GSA issued Invitation for Bid No. GSA-056-19 for Nutrition
21 Services for the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition
22 Program, Congregate meals, and Home-Delivered Meals Components (the “*Manâmkû*’ meals IFB”).
23 The procurement was for the same meal services as the emergency procurement, but for a term of
24 three years with two 1-year options.
25

26
27 ³ The language in Section 12.9 of the emergency procurement contract was litigated in Basil’s appeal in 2019
28 Guam 29. At *id.* ¶¶ 14-21, the Guam Supreme Court held that there was no right to cure failed inspections
as Basil had argued.

1 Section 15 of the General Terms and Conditions of the *Manâmkû'* meals IFB provides the
2 following:

3
4 **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The CPO reserves
5 the right for securing from bidders information to determine whether or not they
6 are responsible and to inspect plant site, place of business, and supplies and services
as necessary to determine their responsibility in accordance with Section 15 of these
General Terms and Conditions.

7 Section 16 of the General Terms and Conditions of the *Manâmkû'* meals IFB provides the
8 following:

9 **STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE**
10 **BIDDER:** In determining the lowest responsible offer, the CPO shall be guided by
the following:

- 11 a) Price of items offered.
- 12 b) The ability, capacity, and skill of the Bidder to perform.
- 13 c) Whether the Bidder can perform promptly or within the specified time.
- 14 d) The quality of performance of the Bidder with regards to awards previously
made to him.
- 15 e) The previous and existing compliance by the Bidder with laws and
regulations relative to procurement.
- 16 f) The sufficiency of the financial resources and ability of the Bidder to perform.
- 17 g) The ability of the bidder to provide further maintenance and services for the
subject of the award.
- 18 h) The compliance with all of the conditions in the Solicitation.

19 The Mandatory Federal Programs Forms section of the *Manâmkû'* meals IFB identified six
20 Mandatory Federal Program Forms that were required to be completed, submitted, and signed and
21 further provided that “*Failure to complete and submit the forms will automatically disqualify the*
22 *Bidder’s submission to this IFB, as being non-responsive.*” The mandatory forms also provided
23 that, “*Failure to comply with this [Required Signature] provision will automatically disqualify the*
Bidder’s submission to this IFB, as being non-responsive.”

24 As one of the Mandatory Federal Program Forms, the B-4 certification required by the
25 *Manâmkû'* meals IFB required bidders to warrant that it had not been “debarred, suspended, declared
26 ineligible or voluntarily excluded” to be a contractor during the previous three-year period. Section
27 2.5 (a) and (b) required evidence of the latest graded Food Inspection Report issued by DPHSS for
28

1 the past 12 months preceding the submission of the bid. Otherwise, the Bidder would agree to an
2 inspection from DPHSS and that it must receive at least a “B” grade (“B” rating) before it can
3 receive the award. The *Manâmkû* meals IFB also required the Bidder to list citations in the areas
4 of procurement, questioned costs, material weaknesses, and the organization’s noncompliance with
5 contract provisions.
6

7 Included in the *Manâmkû* meals IFB was an Affidavit Regarding No Gratuities and
8 Kickbacks that is required in all bids pursuant to 2 G.A.R., Div. 4, Chap. 11, §11107(e). Paragraphs
9 2 and 3 of the Affidavit provides as follows:
10

11 2. To the best of the affiant’s knowledge, neither affiant, nor any of the offeror’s
12 officers, representatives, agents, subcontractors or employees have violated, [or]
13 are violating the prohibition against gratuities and kickbacks set forth in 2 G.A.R.
14 Division 4 §11107(e). Further affiant promises, on behalf of offeror, not to
15 violate the prohibition against gratuities and kickbacks set forth in 2 G.A.R.
16 Division 4 §11107(e).

17 3. To the best of the affiant’s knowledge, neither affiant, nor any of the offeror’s
18 officers, representatives, agents, subcontractors or employees have offered, given
19 or agreed to give, any Government of Guam employee or former Government of
20 Guam employee, any payment, gift, kickback, gratuity or offer of employment in
21 connection with the offeror’s proposal.

22 *See* Affidavit re No Gratuities and Kickbacks dated Oct. 9, 2019 by SH and BASIL. Both bidders
23 made specific representations denying violations of prohibitions against gratuities and kickbacks at
24 the time it submitted its Affidavit.

25 After a series of amendments, the bid opening was scheduled for October 24, 2019 and a
26 requirement was removed to provide information about Department of Labor claims made against
27 the bidder.

28 GSA received BASIL’s and SH’s bid on October 24, 2019. BASIL’s bid was \$1,014,000
for congregate meals and \$2,806,630 for home-delivered meals for a total bid amount of \$3,820,630.

1 SH's bid was \$1,070,550 for congregate meals and \$2,718,661 for home-delivered meals for total
2 bid amount of \$3,789,211.

3
4 On October 25, 2019, GSA recommended that SH be awarded the bid, subject to the
5 approval of the DPHSS Director, and the procurement record was then certified by the procurement
6 office and the CPO.

7 On October 30, 2019, GSA received the concurrence from the Director of DPHSS that SH
8 met the specifications of the *Manâmkû'* meals IFB.

9 On November 8, 2019, GSA sent a Notice of Intent to Award to SH and Bid Status to BASIL
10 indicating that their bid was rejected due to "high price".

11
12 On November 12, 2019, BASIL filed a Freedom of Information Act (FOIA) request with
13 GSA, requesting the bid documents submitted by SH in response to the *Manâmkû'* meals IFB.
14 Through its FOIA request, BASIL noted the produced documents demonstrate that SH failed to
15 fully disclose important information required by the IFB.

16 On November 22, 2019, BASIL protested that SH was ineligible to receive the award
17 because SH was not the lowest responsible bidder. GSA found BASIL's protest was without merit
18 and denied BASIL's protest on November 30, 2019. GSA also made a written determination that
19 the failure by BASIL and SH to submit the previous three years' inspection reports was a minor
20 informality, and the Deputy Attorney General reviewing the protest signed off on the determination.

21
22 On December 16, 2019, BASIL appealed the CPO's decision to deny the protest to the Public
23 Auditor (OPA-PA-19-011).

24 On January 24, 2020, with the pending OPA-PA-19-011 appeal, the Pacific Daily News
25 reported that the Government's War Claims Processing Center was located at the Hakubotan
26 Building in Tamuning. BASIL filed a FOIA request with the Governor's Office requesting all
27
28

1 records related to, and/or discussing the use of, the former Hakubotan building in Tamuning to the
2 Government of Guam for use as the War Claims Processing Center.

3
4 On January 29, 2020, SH submitted its bid on IFB No. GSA-001-20, which was for the
5 Department of Corrections meal services (the “DOC meals IFB”). SH submitted their DOC meals
6 bid after the media reported the use of the Hakubotan building for the War Claims processing.

7 On January 30, 2020, BASIL received a copy of a January 22, 2020 letter from SH to the
8 Governor in response to the FOIA request. The letter indicated that SH was donating to the
9 government “the temporary utilization of approximately 5,000 square feet of commercial space
10 located on the first floor, utilities, and access to the building’s parking lot for the Guam War Claims
11 Center”.

12
13 BASIL submitted a second protest on the *Manâmkû* meals IFB with GSA on February 7,
14 2020, on grounds that SH provided a favor to the Government of Guam in violation of 2 G.A.R.,
15 Div. 4, §11107(4), which prohibits favors to the government.

16 On February 8, 2020, GSA denied BASIL’s second protest, which was based on 5 G.C.A.
17 §5630 (a) and (b). BASIL received the CPO’s Notice of Denial of its protest on February 12, 2020.
18 In OPA-PA-20-003, BASIL contends that GSA failed to address 5 G.C.A. §5630(d) and 2 G.A.R.,
19 Div. 4, §11107 in her decision.
20

21 On February 25, 2020, GSA awarded the DOC meals IFB to SH.

22 On February 27, 2020, BASIL filed a second appeal regarding the government’s *gratis* use
23 of the Hakubotan building (OPA-PA-20-003). The Public Auditor on March 13, 2020 issued an
24 Order Consolidating Appeals OPA-PA-19-011 and OPA-PA-20-003. On May 26, 2020, a Status
25 Conference was held for OPA-PA-19-011 and 20-003.
26
27
28

1 On June 10, 2020, GSA filed a Motion for Summary Judgment in the consolidated appeal.
2 On July 8, 2020, GSA filed a second Motion for Summary Judgment.

3
4 On July 29, 2020, a Hearing on GSA’s Motions for Summary Judgment was held. Hearings
5 on the consolidated appeals were then taken up on October 5 to 7, 2020.

6 **IV. ANALYSIS**

7 **A. BASIL’S PROTEST THAT SH’S “C” RATING RENDERED IT A**
8 **NONRESPONSIBLE/NONRESPONSIVE BIDDER WAS UNTIMELY**

9 BASIL’s protest expired fourteen days after BASIL became aware of SH’s “C” rating. This
10 was no later than fourteen days after April 5, 2019, when BASIL informed the CPO of the “C”
11 rating. An aggrieved protestant may protest at any phase of a procurement. 2 G.A.R., Div. 4,
12 §9101(c)(2); 2020 Guam 14 ¶ 84. The jurisdiction for a protest, therefore, lapsed long before
13 BASIL’s protest to the CPO on November 22, 2019.

14
15 That portion of BASIL’s consolidated appeal protesting that SH was a non-responsible
16 and/or nonresponsive bidder is dismissed.

17 **B. BASIL’S PROTEST THAT SH FAILED TO INCLUDE INFORMATION**
18 **RELATED TO ITS “C” RATING IN ITS *MANÁMKU’ MEALS IFB***
RESPONSE WAS UNTIMELY

19 Under *DFS Guam L.P. v. The A.B. Won Pat International Airport Authority Guam Opinion*,
20 it is necessary to evaluate additional facts as they come to determine whether a protest is timely.
21 2020 Guam 14 ¶ 89 (Timeliness “depends on the cumulation of facts available to the protester.”).
22 More facts accumulated at the time of the submission of bids on October 24, 2019 as the contents
23 of the competing bids were opened. Section 3109 of the Procurement Regulations, which governs
24 Competitive Sealed Bidding, states that public disclosure of opened bids is allowed unless the parties
25
26
27
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1 have a CPO determination regarding confidential proprietary rights.⁴ It is unclear whether GSA
2 would have permitted BASIL's inspection notwithstanding the regulation; the parties showed no
3 evidence of GSA's disclosure procedures; and BASIL did not protest on this basis. Therefore,
4 BASIL did not avail of this provision allowing public disclosure. Instead, BASIL filed a FOIA on
5 the date of the award and waited until November 22, 2019 to file its protest.
6

7 It was not until BASIL could be said to have a duty of inquiry that it could be charged with
8 knowledge of a fact. *Goodman v. Simonds*, 61 U.S. 343 (1857). That occurred at the time it could
9 be charged with knowledge that SH's bid submission was potentially deficient. BASIL had a duty
10 to inquire so that it could preserve its protest, but it did not. The earliest possible time when BASIL
11 could have obtained such information was during SH's bid opening on October 24, 2019. BASIL's
12 protest was without jurisdiction after fourteen days.
13

14 BASIL's consolidated appeal protesting that SH failed to include information and
15 certifications regarding its "C" rating in its bid submission to the *Manåmku'* meals IFB is dismissed.
16

17 **C. BASIL'S PROTEST THAT THE MANÅMKU' MEALS IFB
18 PROCUREMENT WAS IN VIOLATION OF GUAM PROCUREMENT
19 LAWS WAS TIMELY**

20 On November 30, 2019, the CPO provided a written determination denying BASIL's protest
21 that SH's failure to submit information on its "C" rating and the required certifications were a "minor
22

23 ⁴ See 2 GAR Div. 4 §3109 (1)(2) (The opened bids shall be available for public inspection except to the extent
24 the bidder designates trade secrets or other proprietary data to be confidential as set forth in Subsection
25 3109(1)(3) of this section. Material so designated shall accompany the bid and shall be readily separable from
26 the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Prices and makes and
27 models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available
28 at the time of bid opening regardless of any designation to the contrary.); See also §3109(1)(3) (Confidential
Data. The Procurement Officer shall examine the bids to determine the validity of any requests for
nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as
to the disclosure of data, the Procurement Officer shall inform the bidders in writing. If the parties do not
agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing what portions
of the bids will be disclosed and that, unless the bidder protests under Chapter 9 (Legal and Contractual
Remedies of this Guam Procurement Regulations, the bids will be so disclosed. The bids shall be opened to
public inspections subject to any continuing prohibition on the confidential data.)

1 informality” *sic*. See Determination of the CPO, November 30, 2019. The Procurement Appeal of
2 that CPO decision was timely filed on December 16, 2019.

3
4 Section 5001 of the Procurement Law guides how the law is to be applied:

5 **Purposes, Rules of Construction. (a) Interpretation.** This Chapter shall be
6 construed and applied to promote its underlying purposes and policies.

7 **(b) Purposes and Policies.** The underlying purposes and policies of this Chapter
8 are:

9 (1) To simplify, clarify, and modernize the law governing procurement by this
10 Territory;

11 (2) To permit the continued development of procurement policies and practices;

12 (3) To provide for increased public confidence in the procedures followed in public
13 procurement;

14 (4) To ensure the fair and equitable treatment of all persons who deal with the
15 procurement system of this Territory;

16 (5) To provide increased economy in territorial activities and to maximize to the
17 fullest extent practicable the purchasing value of public funds of the Territory;

18 (6) To foster effective broad-based competition within the free enterprise system;

19 (7) To provide safeguards for the maintenance of a procurement system of quality
20 and integrity; and

21 (8) To require public access to all aspects of procurement consistent with the sealed
22 bid procedure and the integrity of the procurement process.

23 With years of litigation between the government and BASIL, determining that food establishment
24 inspection grades is a mere formality must be evaluated for its consistency with Section 5001 of the
25 Procurement Law, and implicates *inter alia* subsections (3), (4), (6), (7), and (8).

26 Section 5003 of the Procurement Law requires the parties involved in the negotiation,
27 performance, or administration of territorial contracts to act in good faith. Section 5002 states that
28 the principles of law and equity, including the Uniform Commercial Code of Guam, the law
merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress,
coercion, mistake, or bankruptcy supplements Guam Procurement Law unless the Procurement Law
provides for the result. “Good faith” under Guam’s Uniform Commercial Code means honesty in
fact in the conduct or transaction concerned. 13 G.C.A. §1201(19). Every contract imposes a duty
of good faith and fair dealing in its performance and its enforcement. See Restatement (Second) of
Contract §205. The duty obliges parties not to destroy the reasonable expectations of the other party

1 and also applies to the government throughout the procurement process. If the government conducts
2 a procurement in an arbitrary, capricious, or irrational manner, then it has breached the implied
3 contract to consider all bids fairly and honestly. The government is said to breach the implied
4 contract of good faith and fair dealing if its consideration of offers is arbitrary and capricious toward
5 the bidder-claimant. *See Comprehensive Health Services, Inc. v. United States*, 70 Fed. Cl. 700,
6 738 (Ct. Cl. 2006) (citations, quotations omitted).

8 Four factors determine whether a breach of the duty of good faith and fair dealing has
9 occurred in procurement: 1) absence of a reasonable basis for the administrative decision; 2) the
10 amount of discretion afforded to the procurement officials by applicable statutes and regulation; 3)
11 proven violations of pertinent statutes or regulations; and 4) subjective bad faith. There is no
12 requirement that each of the four factors be present to find a breach. *Id.* (citations, quotations
13 omitted).

15 A rejected bidder bears a heavy burden of showing that a contracting officer's decision had
16 no rational basis because the officer engages in what is inherently a judgmental process. *Id.* at 720-
17 21 (citations, quotations omitted). However, the agency must treat each offeror equally, applying a
18 consistent standard for evaluating each proposal because uneven treatment goes against the standard
19 of equality and fair-play that is a necessary underpinning of the government's procurement process,
20 amounting to an abuse of the agency's discretion. *Id.* at 721 (citations, quotations omitted). The
21 procuring agency is presumed to be acting in good faith. Otherwise, the proof must be almost
22 irrefragable, which is equivalent to the "clear and convincing evidence" standard. *Id.* (citations,
23 quotations omitted). "Clear and convincing evidence means testimony that is so clear, direct,
24 weighty, and convincing as to enable the trier of fact to come to a clear conviction, without
25 hesitancy, of the truth of the precise facts in issue." *Storehaven Corp. v. Taitano*, 2001 Guam 16 ¶
26
27
28

1 19.

2 The Public Auditor finds that GSA did not treat BASIL as equally as SH and applied an
3 inconsistent standard to evaluate each proposal that goes against fair play. When the issue of DPHSS
4 food establishment inspection grades was cause for termination of BASIL's contract, forcing it to
5 seek procurement appeal and judicial review, while GSA treated inspection grades and certifications
6 on them as a minor informality and waived the requirement for SH. The Public Auditor, therefore,
7 finds the waiving of the food establishment inspection information and certifications to be an abuse
8 of discretion as a violation of the implied contract of good faith and fair dealing.

9
10 If it is found that an agency's decision is not rational, then the bidder must be prejudiced by
11 the Government's conduct. *Id.* (citations omitted). To prevail in a protest, the protester must show
12 not only a significant procurement process error, but also that the error prejudiced it. *Id.* (citations,
13 quotations omitted). The CPO, in denying BASIL's protest, waived the requirement to benefit SH,
14 a competing bidder but did not apply it to benefit BASIL. Section 2.5 (a) of the *Manâmkû'* meals
15 IFB speaks to a "B" rating or better within the last 12 months. The CPO in her decision to waive
16 the requirement weighed SH's recent conduct as a minor informality against BASIL's, which
17 occurred in 2016, and which was cause for termination of the 2016 contract and was a serious-
18 enough violation of the 2016 contract to litigate. BASIL was prejudiced by the CPO's waiver.

19
20
21 The Public Auditor's jurisdiction shall be utilized to promote the integrity of the procurement
22 process and the purposes of Guam Procurement Law. 5 G.C.A. § 5703 (f). The Public Auditor
23 herein determines that the contract for the *Manâmkû'* meals IFB in favor of SH is to be terminated.

24 The CPO's decision that the food inspection information and certifications were a minor
25 informality involved no conduct by SH. As a remedy, if after an award it is determined that a
26 solicitation or award of a contract is in violation of law and the person awarded the contract has not
27

1 acted fraudulently or in bad faith, the contract may be ratified and affirmed, provided it is determined
2 that doing so is in the best interests of the Territory; or the contract may be terminated and the person
3 awarded the contract shall be compensated for the actual expenses reasonably incurred under the
4 contract, plus a reasonable profit, prior to the termination. 5 G.C.A. §5452 (a). The Public Auditor
5 herein decides that SH is to be compensated for actual expenses reasonably incurred, upon which it
6 will be awarded a reasonable profit of one hundred dollars (\$100.00). SH shall submit evidence of
7 costs to the Public Auditor within ten days of this Decision for accounting.
8

9 **D. BASIL’S PROTEST THAT SH GRANTING THE GOVERNMENT
10 FREE USE OF THE HAKUBOTAN BUILDING, FREE UTILITIES,
11 AND FREE PARKING IS A VIOLATION OF THE PROCUREMENT
LAW’S ETHICAL STANDARDS WAS VALID**

12 BASIL became aggrieved on the date it can be charged with knowledge of the fact that SH
13 had given Hakubotan property rights *gratis*. On January 30, 2020, the Governor’s Office responded
14 to BASIL’s FOIA request. The protest was timely submitted to the CPO on February 7, 2020.
15 BASIL received the CPO’s denial of its protest on February 12, 2020, and this appeal was timely
16 filed on February 27, 2020.
17

18 BASIL alleges breach of ethical conduct in SH’s allowing the government *gratis* use of the
19 Hakubotan building as a gratuity, kickback, or favor for the territory:

20 **5 G.C.A. §5630. Gratuities and Kickbacks.**

21 **(a) Gratuities.** It shall be a breach of ethical standards for any person to offer, give
22 or agree to give any employee or former employee, or for any employee or former
23 employee to solicit, demand, accept or agree to accept from another person, a gratuity
24 or an offer of employment in connection with any decision, approval, disapproval,
25 recommendation, preparation of any part of a program requirement or a purchase
request, influencing the content of any specification or procurement standard,
rendering of advice, investigation, auditing, or in any other advisory capacity in any
proceeding or application, request for ruling, determination, claim or controversy, or
other particular matter, pertaining to any program requirement or a contract or
subcontract; or to any solicitation or proposal therefor.

26 **(b) Kickbacks.** It shall be a breach of ethical standards for any payment, gratuity or
27 offer of employment to be made by or on behalf of a subcontractor under a contract
28 to the prime contractor or higher tier subcontractor or any person associated
therewith, as an inducement for the award of a subcontract or order.

1
2 **(c) Contract Clause.** The prohibition against gratuities, kickbacks and favors to the
3 Territory prescribed in this Section shall be conspicuously set forth in every contract
and solicitation therefor.

4 **(d) Favors to the Territory.** For purposes of this Section, a favor is anything,
5 including raffle tickets, of more than *de minimis* value and whether intended for the
6 personal enjoyment of the receiver or for the department or organization in which
7 they are employed or for any person, association, club or organization associated
8 therewith or sponsored thereby. It shall be a breach of ethical standards for any
9 person who is or may become a contractor, a subcontractor under a contract to the
10 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
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.

11 GSA argues that the Governor is allowed to accept charitable donations:

12 **5 G.C.A. §22408. Charitable Donations.** The Governor is authorized to accept
13 monetary donations, from any individual or organization, which shall be deposited
14 in a separate fund by the Treasurer of Guam. Such donations shall, upon
15 authorization by the Governor, be used and expended in accordance with the terms
and conditions upon which they were made. Nothing herein shall be construed to
prevent the Governor on behalf of the Government of Guam from accepting
donations of property from any individual or organization.

16 The Public Auditor finds that the CPO was without authority to apply Government Operations'
17 General Fiscal Policies and Controls. They are outside of the laws enlisted in Guam Procurement
18 Law's Supplementary General Principles of Law section. *See* 5 G.C.A. §5002 ("Unless displaced
19 by the particular provisions of this Chapter, the principles of law and equity, including the Uniform
20 Commercial Code of Guam, the law merchant, and law relative to capacity to contract, agency,
21 fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions
22 of this Chapter").

24 Additional considerations support this finding. First, there is no exception to the prohibition
25 on Favors for the Territory found in Guam Procurement Law or other authority provided by GSA.
26 Mechanically, the CPO was in error to supplement the application of the Favors to the Territory
27 prohibition with Fiscal Law, when deciding on the *gratis* use of the Hakubotan building and whether
28

1 it was a violation of the Ethical Standards. Second, it is possible to construe the “Charitable
2 Donations” statute in the Fiscal law together with the “Favors to the Territory” prohibition in the
3 Procurement Law as allowing the Governor to accept charitable donations so long as the donation
4 does not violate the Guam Procurement Law Ethical Standards. Lastly, GSA put forth no evidence
5 of the Governor’s acceptance of the use of the Hakubotan building including utilities and parking
6 as a charitable donation. In addition, that she would accept it as an exception to the prohibition
7 against Favors for the Territory.
8

9 Having determined the CPO’s error, a gratuity comprises anything of more than a nominal
10 value, including any tangible or intangible benefit in the nature of favors, transportation, or
11 accommodation, present or promised, unless the government receives consideration of substantially
12 equal or greater value. *See* 5 G.C.A. §5601(f); 2 G.A.R., Div. 4, §11101(6). Section 5630(d) of
13 Guam Procurement Law expressly declares it a breach of ethical standards for any person who is or
14 may become a contractor, or any person associated therewith, to offer, give or agree to give any
15 employee or agent of the Territory, a favor or gratuity **“during the pendency of any matter related
16 to procurement, including contract performance warranty periods.”** *See id* (emphasis
17 supplied). SH gave a favor of more than a nominal value to the Territory when SH allowed the
18 government free use of 5,000 square feet of the Hakubotan building, including the utilities and
19 parking. This occurred during the pendency of the *Manâmkû’* meals and DOC meals procurements.
20 Assuming that it made a similar representation in the DOC meals IFB, as required by Guam
21 Procurement Law, it would be a false statement made in connection with SH’s bid submission in
22 that procurement.
23
24

25 Therefore, the Public Auditor finds that SH violated Guam Procurement Law Ethical
26 Standards. The prohibited *Hakubotan* favor to the government was a breach of Guam Procurement
27
28

1 Law and SH represents it did not to give gratuities or kickbacks. Any similar affidavit in the DOC
2 meals IFB would falsely represent that SH did not violate the prohibition against kickbacks and
3 gratuities.
4

5 As a remedy, BASIL requested the CPO debar or suspend SH from being a government
6 contractor. However, the CPO concluded there was no violation and did not commence such
7 proceedings when it denied BASIL's protest. The authority for a proceeding to debar or suspend a
8 contractor is found at 5 G.C.A. §5426(a):

9
10 After reasonable notice to the person involved and reasonable opportunity for that
11 person to be heard, the CPO, the Director of Public Works or the head of a purchasing
12 agency, after consultation with the using agency and the Attorney General, shall have
13 authority to debar a person for cause from consideration for award of contracts. The
14 debarment shall not be for a period of more than two (2) years. The same officer,
15 after consultation with the using agency and the Attorney General, shall have
16 authority to suspend a person from consideration for award of contracts if there is
17 probable cause for debarment. The suspension shall not be for a period exceeding
18 three (3) months. The authority to debar or suspend shall be exercised in accordance
19 with regulations promulgated by the Policy Office.

20 No notice to SH of debarment or suspension proceedings has been issued. However, an appeal was
21 taken by BASIL on February 27, 2020 of a decision required from the CPO in accordance with
22 5 G.C.A. §5426(c), and jurisdiction is now properly with the Public Auditor.⁵

23
24 **E. DEBARMENT AND SUSPENSION PROCEEDINGS ON APPEAL TO**
25 **THE PUBLIC AUDITOR AFTER CPO'S DENIAL IN ERROR**

26 As SH provided a Favor to the territory in violation of Guam Procurement Law's Ethical
27 Standards, the Public Auditor now *deconsolidates* this appeal so that each will proceed separately.⁶
28

24 ⁵ See 5 G.C.A. §5426(e) (Finality of Decision. A decision under Subsections (c) or (f) of this Section shall
25 be final and conclusive, unless fraudulent, or an appeal is taken to the Public Auditor in accordance with
26 §5706 of this Chapter). See also 5 G.C.A. §5706 (Conferring jurisdiction to the Public Auditor to resolve
27 contract controversies). Together, the statutes confer appellate jurisdiction to the Public Auditor over
28 decisions by the CPO concerning debarments and suspensions.

27 ⁶ The power to consolidate cases includes the power to deconsolidate them. *E.g. In re Student-Athlete Name*
28 *and Likeness Litigation*, 2010 WL 5644656; *Blue Cross Blue Shield of Massachusetts, Inc.*, 617 F.3d 635
(7th Cir. 2015).

1 Accordingly, OPA Appeal No. OPA-PA-19-011 is decided except for award of SH's costs and
2 reasonable profit. OPA Appeal No. OPA-PA-20-003 remains undecided and is unconsolidated.

3 Section 5426(f) states that any member of the public may petition the CPO to take action
4 under the authority of §5426(a) to debar or suspend a contractor for Ethical Standards violations.
5 BASIL's protest was a petition to the CPO for debarment or suspension. The CPO denied the
6 petition and BASIL appealed in OPA-PA-20-003, in pursuit of its administrative remedies.

7 BASIL will receive a reasonable notice and meaningful opportunity to be heard on its appeal.
8 A copy of this Decision will also be served on SH, together with an Order to show cause why it
9 should not be debarred or suspended for violation of the Ethical Standards of the Procurement Law.
10 SH will have thirty (30) days from the date of the order to show cause to respond, after which a
11 hearing on the order to show cause will be set, with a Decision to follow.

12 CONCLUSION

13 Based on the foregoing, the Public Auditor determines the following:

14 A. BASIL's protest that SH was not the lowest responsible and responsive bidder in IFB
15 No. GSA-056-19 is untimely and that portion of the consolidated appeal is dismissed.

16 B. BASIL's protest that SH failed to include certifications and information related to its
17 April 3, 2019 "C" rating in IFB No. GSA-056-19 is untimely and that portion of the consolidated
18 appeal is dismissed.

19 C. Basil's protest that the CPO's waiver of minimum health inspection grades violated
20 the Procurement Law when the CPO determined that information in the *Manâmku'* meals IFB was
21 a minor informality is timely, and BASIL's appeal to the Public Auditor on such basis was timely.
22 The CPO abused her discretion by granting a waiver of requirements related to food establishment
23 grades because she applied the requirement unequally, thereby prejudicing BASIL. The remedy for
24 the violation is post-award. The contract with SH is to be terminated, and SH shall submit evidence
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1 of costs for accounting. SH will be awarded a reasonable profit of \$100.00 on top of those accounted
2 costs.

3
4 D. BASIL's protest that SH's allowing the government to use the Hakubotan building
5 free of rent and utilities was a violation of ethical standards as a prohibited Favor for the Territory
6 and is valid. The CPO erred in concluding that it was a Charitable Donation, which it was not.

7 E. OPA Appeal No. OPA-PA-20-003 is deconsolidated from this consolidated appeal.
8 A decision, in that case, is pending a hearing on an Order to show cause why SH should not be
9 disbarred or suspended for violation of the Procurement Law's Ethical Standards.

10 The parties shall bear their respective costs and attorney's fees.

11 This is a Final Administrative Decision for Appeal No. OPA-PA-19-011. The Parties are
12 hereby informed of their right to appeal from a Decision of the Public Auditor to the Superior Court
13 of Guam in accordance with Part D of Article 9 of 5 G.C.A. §5481(a) within fourteen (14) days after
14 receipt of a Final Administrative Decision. A copy of this Decision shall be provided to the Parties
15 and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for
16 review on the OPA website at www.opaguam.org.

17
18
19 **DATED this 11th day of December, 2020.**

20
21 
22 **BENJAMIN J.F. CRUZ**
23 **Public Auditor of Guam**



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-19-011 and 20-003

Jerrick Hernandez <jhernandez@guamopa.com>

Fri, Dec 11, 2020 at 11:16 AM

To: "Geri E. Diaz" <gdiaz@icclawgroup.com>, Sandra Miller <smiller@oagguam.org>, Robert Kono <robert.kono@gsa.guam.gov>, Vanessa Williams <vlw@vlwilliamsllaw.com>

Cc: Clariza Roque <croque@guamopa.com>

Hafa Adai,

Please see attached Decision for OPA-PA-19-011 and 20-003. 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

--

Regards,

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

Auditor

Office of Public Accountability – Guam

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