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OPA-PA-25-002 - 1) Appellant Glimpses of Guam, Inc.'s Opposition to Purchasing Agency's Motion to Dismiss; and 2) Appellant Glimpses of Guam, Inc.'s Opposition to Purchasing Agency's Motion to Confirm Determination.**Janet Sardoma** <ofc.manager@pacificlawyers.law>

Mon, May 12, 2025 at 3:19 PM

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Cc: "Daniel J. Berman" <djberman@pacificlawyers.law>, "Christine A. Pangelinan" <chrisap@pacificlawyers.law>

Dear Mr. Hernandez:

Please see the attached documents for filing in the above matter. Please note the following:

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Number of documents attached:	Two (2)
Name of each attached document:	1) Appellant Glimpses of Guam, Inc.'s Opposition to Purchasing Agency's Motion to Dismiss. 2) Appellant Glimpses of Guam, Inc.'s Opposition to Purchasing Agency's Motion to Confirm Determination.
Total number of pages attached:	Thirty-Three (33)

Please return filed/received copies by email.

Regards,

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2 attachments**OPA-PA-25-002 Oppo to Mtn to Confirm Det.pdf**

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**OPA-PA-25-002 Oppo to Mtn to Dismiss.pdf**

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9
10 **BEFORE THE PUBLIC AUDITOR**
11 **PROCUREMENT APPEALS**
12 **TERRITORY OF GUAM**

13 IN THE APPEAL OF

14 GLIMPSES OF GUAM, INC.,

15 Appellant.

Appeal No.: OPA-PA-25-002

**APPELLANT GLIMPSES OF GUAM, INC.'S
OPPOSITION TO PURCHASING
AGENCY'S MOTION TO CONFIRM
DETERMINATION**

16 COMES NOW Appellant GLIMPSES OF GUAM, INC. (hereinafter "Glimpses"),
17 by and through counsel undersigned, and hereby respectfully opposes the Purchasing
18 Agency's Motion to Confirm Determination filed by GUAM VISITORS BUREAU
19 ("GVB").

20 **I. INTRODUCTION**

21 Glimpses submitted a bid on a GVB Request for Proposal ("RFP") for a contract
22 to perform marketing and advertising services. "The Manhita Team" – the offeror on
23 the highest evaluated bid – consists of three agencies SKIFT, Big Fish Creative Inc. ("Big
24 Fish") and Ruders Integrated Marketing Strategies ("RIMS"). Although RIMS submitted
25 no bid individually, only RIMS was awarded the contract. GVB concealed that RIMS
26 was a non-bidder and failed to notify Glimpses of its right to appeal.

27 GVB asks the Public Auditor for a *de novo* review and confirmation of GVB's
28 determination of need to award the contract as issue in this appeal without delay to
protect the substantial interests of Guam. GVB has separately moved to dismiss

Glimpses' appeal on similar grounds, seeking to double-down the award of a contract to a non-bidder because Glimpses did not oppose the substantial interests determination ("SID") within two days of notification. Glimpses opposes the motion to dismiss and has opposed the SID since the beginning of this appeal. The two-day deadline is void due to GVB's defective notice. No state of emergency exists, and if one did exist, it did not recently arise. Nor did any supposed emergency recently and suddenly become more severe such that GVB could not have raised it in the RFP. GVB should be equitably estopped from the procurement law defenses it alleges because GVB delayed and concealed information necessary to Glimpses challenging the SID sooner. Glimpses has also moved for summary judgment in this proceeding, so even if a true state of emergency were to exist and be confirmed, the stay can only be lifted through the grant or denial of summary judgment. Summary judgment should be considered and resolved, before any trial briefs are presented and before any genuine issues of fact are argued and decided.

II. BACKGROUND

Glimpses incorporates by reference the Background in its Opposition to GVB's Motion to Dismiss.

III. POINTS AND AUTHORITIES

A. Glimpses Motion for Summary Judgment Should be Considered and Granted

On May 7, 2025, Glimpses filed a Motion for Summary Judgment with the Public Auditor, together with supporting brief and exhibits sourced from the Record on Appeal or public record at Department of Revenue and Taxation. Proper and timely consideration of Glimpses' Motion for Summary Judgment ("MSJ") would address and dispose of the instant Motion to Confirm Determination brought by GVB. This is not only fair to GVB as the appellee here and proper for a transparent procurement process, but it is more efficient for the Public Auditor as the decision maker. Most if not all of the arguments raised by GVB herein have already been separately and fully briefed. For

example, Glimpses shows how awarding a contract to RIMS is void under procurement law and contract law principles because RIMS was not the offeror of any individual bid, instead the offeror was The Manhita Team. *See* Glimpses' MSJ at 4-8. Moreover, Glimpses shows how the SID that GVB seeks to confirm here violates Guam law and is void. *See id.* at 9-10. These points are further explained in Glimpses' Opposition to GVB's Motion to Dismiss and ought not to be fully duplicated here.

B. GVB's "Memorandum of Law" in Support of its Motion to Confirm Determination is a Premature Trial Brief

While a *de novo* review by the Public Auditor may eventually be proper, it is not yet warranted. GVB's Motion to Confirm Determination asserts many factual issues in dispute that should not be considered at this stage, especially without providing Glimpses an opportunity to obtain discovery and respond. To this point, Hearing Briefs are scheduled on June 9, 2025, and the Hearing (trial) is scheduled on June 12, 2025.

GVB offers its reasons for why the need to address Guam's tourism recovery plan is urgent. Motion to Confirm at 6-9. GVB offers the affidavits of its Vice President and its Director of Global Marketing to support the idea that a state of emergency exists. These are inherently complex opinion and factual issues that Glimpses has challenged from the outset. *See* Glimpses Notice of Appeal, GVB1193-96. And GVB still has not explained why the emergency was not part of the RFP, or what has changed since the time of the RFP, to create the new emergency. GVB has prematurely presented what is essentially a trial brief under the shell of a motion for summary adjudication seeking to confirm an invention of a state of emergency after the procurement award of a contract.

None of the material in Section C of GVB's Memorandum relates to the relief GVB seeks in the Motion to Confirm. *See* Motion to Confirm at 9-12 (attempting to explain why awarding the contract to the Manhita Team was justified). These are red herring arguments that involve re-evaluating the competing RFP bids. *See id.* While GVB accurately describes the evaluation sheets, GVB continues to act as if RIMS submitted an individual bid or as if RIMS and The Manhita Team are merely one and

the same. This illusion or attempt at illusion is demonstrated when GVB repeatedly identifies the questionable bid as “RIMS’ Manhita” proposal, bid, or submission. *Id.* at 9, 12 (emphasis added). RIMS did not submit a bid. RIMS is not doing business as The Manhita Team. The only “Manhita” corporations that exist on Guam appear to be wholly unrelated and RIMS does not purport to be a parent or subsidiary of any business named “Manhita.” The Manhita Team submitted a bid, and it is certainly a team, and clearly not one company. GVB’s defense of the evaluation of this bid only underscores the failure to award a contract to The Manhita Team, which was the only name GVB recognized on evaluations. Evaluation would have been remarkably different if RIMS had submitted an individual bid—which it did not. Certainly, the other bids GVB evaluated would compare differently to a hypothetical bid from the one entity GVB says won the contract—RIMS. Regardless, because GVB’s award to RIMS is null and void, the award to RIMS should be cancelled, and a rebid should be ordered. Who would bid and how those bids would be evaluated, in an apple-to-apple comparison, is speculative at this point.

C. After the OPA Completes Consideration of this Appeal and Enters Final Judgment, the Superior Court will have Subject Matter Jurisdiction

GVB states that “it does not appear that the Superior Court has jurisdiction over the [Public Auditor]’s confirmation of a determination that award is necessary to protect substantial interests of Guam.” Motion to Confirm at 4 n.1. As discussed above, the Public Auditor should be allowed to make a *de novo* review of the SID, but just not at this stage of motion practice anchored on GVB’s non-expert lay opinions; this is because final Hearing is on June 12, 2025 and some discovery should be allowed for Glimpses. In contrast, Glimpses’ MSJ is briefed, based on undisputed GVB record of procurement and public documents, and ready for resolution. To the extent the Public Auditor is to consider the many factual and opinion issues GVB attempts to now present in this fact-based opinion declarations presented as a motion, Glimpses should

be afforded an opportunity to conduct discovery, such as to depose the two affiants GVB offers. *See* Motion to Confirm, Exhibits A, B; Guam R. of Civ. P. 56(d)(2).¹

GVB argues "there is no subject matter jurisdiction over Glimpses[]" instant appeal insofar as it articulates grounds related to the SID." Motion to Confirm at 5 n.2. However, Glimpses has submitted with document support that no state of emergency exists since the outset of this appeal. That decision is pending before the OPA. In addition, Glimpses has filed a second appeal. Logically, as Glimpses previously advocated, and for judicial economy, the two appeals would and should be consolidated by a court or this OPA. Finally, because GVB failed to provide statutorily required proper notice of the right to appeal in the SID notice, jurisdiction exists over Glimpses' appeal relating to the SID, and that issue is before the OPA now.

D. GVB's Purported Notice of a Public State of Emergency and Necessity to Protect Substantial Interests of Guam Dated February 24, 2025 Is Void

Glimpses incorporates by reference the arguments fully briefed in Section III. A. of its Opposition to GVB's Motion to Dismiss.

¹ Under GRCP 56(d)(2), "If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: ... (2) allow time to obtain affidavits or declarations or to take discovery." In Promulgation Order No. 06-006-18, the Supreme Court of Guam amended GRCP 56 to conform to the current Federal Rule of Civil Procedure 56. The newly adopted GRCP 56(d) closely resembles the prior version of GRCP 56(f). "[B]ecause the Guam Rules of Civil Procedure are generally derived from, although not identical to, the Federal Rules of Civil Procedure ..., federal decisions that construe the federal counterparts to the [GRCP] are persuasive authority." *Gov't of Guam v. O'Keefe*, 2018 Guam 4, ¶9. "Although Rule 56(f) facially gives judges the discretion to disallow discovery when the non-moving party cannot yet submit evidence supporting its opposition, the Supreme Court has restated the rule as **requiring**, rather than merely permitting, discovery "where the nonmoving party has not had the opportunity to discover information that is essential to its opposition." *Metabolife Intern., Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001) (emphasis added) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5 (1986)).

E. No State of Public Emergency Exists

Glimpses incorporates by reference the arguments fully briefed in Section III. B. of its Opposition to GVB's Motion to Dismiss.

F. GVB's Should be Equitably Estopped from Relying on its Procurement Law Defenses

Glimpses incorporates by reference the arguments fully briefed in Section III. C of its Opposition to GVB's Motion to Dismiss.

CONCLUSION

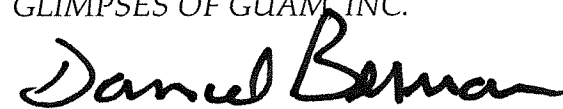
Glimpses submits that GVB's Motion to Confirm Determination should be denied. If not denied, then as appropriate, Glimpses should have the time necessary to take discovery under the former GRCP Rule 56(f) and now revised as 56(d)(2). *See Est. of Cruz v. Detry Corp.*, 2023 Guam 14, ¶27.

DATED this 12 day of May, 2025.

Respectfully submitted,

BERMAN LAW FIRM
Attorneys for Appellant
GLIMPSES OF GUAM, INC.

By:



DANIEL J. BERMAN