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**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS**

IN THE MATTER OF THE APPEAL OF  
DFS GUAM L.P.,

Appellant.

APPEAL NO.: OPA-PA-13-006

**DECLARATION OF DEBORAH E. FISHER**

I, Deborah E. Fisher, hereby declare as follows:

1. I am one of the attorneys representing interested party Lotte Duty Free Guam, LLC ("Lotte"), by and through its attorneys, Cabot Mantanona LLP, in the above referenced case.
2. I make this declaration based on my personal knowledge of the pleadings and proceedings, and am competent to testify to all matters I have asserted.
3. Attached and incorporated as **EXHIBIT 1** is a true and correct copy of the A.B. Won Pat International Airport Authority, Guam's Decision dated May 17, 2013.
4. Attached and incorporated as **EXHIBIT 2** is a true and correct copy as downloaded by me from the internet of the Moodie Report, dated July 31, 2014.


5. Attached and incorporated as **EXHIBIT 3**, is a true and correct copy from the file of the document entitled "Response to Notice of Appointment of Hearing Officer," filed at the OPA by DFS, dated December 13, 2013.
6. Attached and incorporated as **EXHIBIT 4**, is a true and correct copy as downloaded by me from the internet of the Lujan Firm web page.

I declare under penalty of perjury under the laws of Guam that the foregoing is true and correct.

Executed this 18th day of September, 2014.

**CABOT MANTANONA LLP**  
***Attorneys for Lotte Duty Free Guam, LLC***

By:



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May 17, 2013

**VIA EMAIL [wjblair@kbsjlaw.com](mailto:wjblair@kbsjlaw.com)**

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**RE: Request For Proposal For Specialty Retail Concession – Multiple Concepts  
RFP No. GIAA010-FY12**

*Hafa Adai Mr. Blair:*

Pursuant to 2 GAR Div. 4 § 9101(g), the A.B. Won Pat International Airport Authority (“GIAA” or “the Airport”) hereby delivers its decision on the matters raised in the letters submitted by DFS Guam L.P. (“DFS”) on April 23, 2013, May 2, 2013, and May 7, 2013 (collectively the “Protest”). GIAA denies the Protest and concludes that Lotte Duty Free Guam, LLC (“Lotte”) remains the most qualified proposer under the above-referenced Request for Proposal (the “RFP”).

DFS has held the lucrative specialty retail concession at the Airport exclusively for over 30 years. With this RFP, for the first time DFS faced competition in the bid for the concession. Bearing in mind the importance of this RFP to the Airport, the proposers and the people of Guam, GIAA instituted a competitive proposal process in full compliance with Guam law that was fair to everyone. An independent, knowledgeable and unbiased evaluation committee was appointed to review the proposals and to score them according to well-defined criteria. The evaluation committee relied upon the advice of an independent expert to review and compare the financial pieces of the proposals.

After a thorough vetting of the proposals, the evaluation committee unanimously selected Lotte as the most qualified proposer; DFS was not even ranked second of four. To protect the integrity of the process, GIAA presented the evaluation committee’s rankings with letter designations so that the Board would not be swayed to vote based upon the identity of the proposer or other parties, as opposed to the benefits offered by its proposal. The Board, acting thoughtfully and with due deliberation, voted to adopt the evaluation committee’s recommendation and it likewise found Lotte to be the most qualified proposer.



AMERICAN ASSOCIATION  
OF AIRPORT EXECUTIVES



AIRPORTS COUNCIL  
INTERNATIONAL



National Association of State Aviation Officials



THE INTERNATIONAL AIR CARGO ASSOCIATION

**EXHIBIT 1**

While GIAA was seeking to implement a fair process, DFS sent letters to GIAA and the Board in an effort to influence and undermine the process. When DFS did file its Protest, it was late, frivolous and found after investigation to be without merit. GIAA concludes that there is no justification to further delay the award of the specialty retail concession to Lotte. It is important that GIAA start realizing the significant benefits of its concession at the Airport without further delay.

## **I. GENERAL BACKGROUND FACTS**

### **A. Background of the Specialty Retail RFP**

DFS has held the specialty retail concession at the Airport exclusively for over 30 years. Until now, DFS has never had to compete for it. In designing the RFP process to which DFS now objects after having learned that it was not selected as the most qualified proposer, GIAA was careful to employ a competitive proposal process that would not only comply with applicable law, but that would result in the most beneficial concession contract possible for the Airport. As described in detail below, GIAA took careful steps to ensure that it evaluated the proposals as objectively and thoroughly as possible so that whoever was ultimately selected at the end of this fair and impartial process truly was the most qualified proposer able to bring maximum value from this concession to the people of Guam.

On July 19, 2012, GIAA issued the RFP for “the development, construction, and operation of a high quality specialty retail concession at GIAA’s Main Passenger Terminal.” The issuance of the RFP was well publicized. The advertisement for the RFP was published in the *Pacific Daily News* on July 19, 23, and 25, 2012, and in the *Marianas Variety* on July 19, 23, and 30, 2012. As a result of the publication of the RFP, GIAA received a number of inquiries from interested retailers around the world.

GIAA offered all interested proposers the opportunity to review the concession facilities and to ask questions regarding the RFP. On August 17, 2012, GIAA held a pre-proposal conference at the Airport. This pre-proposal conference was attended by various international duty free retailers including DFS, Lotte, The Shilla Duty Free, JR/ Duty Free, Nuance and others.

GIAA set the original due date for submitting proposals as September 21, 2012. GIAA subsequently extended the deadline in order to allow proposers to ask questions about the concession, the Airport facilities, and the terms of the proposal. Under the Guam Procurement Law and Regulations, whenever one prospective proposer asks a question, the question and answer must be distributed to all the proposers. After the August 17 pre-proposal conference, many of the proposers asked follow up questions. To ensure that all of the proposers’ questions were answered, GIAA extended the RFP deadline to October 17, 2012. GIAA responded to over one hundred questions, which resulted in an additional 42 pages of RFP addenda (including detailed charts and exhibits) distributed to all interested proposers.

On October 5, 2012, DFS submitted the first in a series of letters complaining about the RFP process, but stopped short of making a formal protest.<sup>1</sup>

Of the many proposers who expressed an interest in the RFP, four proposers, including Lotte and DFS, submitted their proposals on or before the October 17, 2012 deadline, setting the stage for a truly competitive specialty retail solicitation that GIAA had not seen in the history of the specialty retail concession.

**B. GIAA Instituted an Evaluation Process that Was Fair to All Proposers, and in October 2012 DFS Sent GIAA Letters of “Concern” without Filing a Formal Protest Over the Same Conduct That Is the Subject of its Current Protest**

Once the proposals were received, GIAA took affirmative steps to ensure that the proposals were thoroughly reviewed and evaluated by an independent and unbiased committee. On November 1, 2012, the following individuals were appointed to a committee to evaluate the proposals submitted in response to the RFP (hereinafter the “Evaluation Committee”): Pedro R. Martinez, Deputy Executive Manager; Jean M. Arriola, Airport Services Manager; Carlos Bordallo, Comptroller; and Frank Santos, GIAA Business and Financial Consultant. These individuals were appointed to the Evaluation Committee because GIAA had concluded that they had the requisite experience and background in GIAA operations to ensure that the most qualified proposer would be selected following a fair and thorough evaluation process. Within a few days of their appointment, the Evaluation Committee members received copies of the proposals. From receipt of the proposals until submission of their final rankings at the end of March 2013, the Evaluation Committee engaged in a thoughtful and objective review and evaluation of the proposals.

On November 7, 2012, GIAA received a letter dated October 30, 2012 from DFS alleging impropriety on the part of Lotte for giving gifts to GIAA Board members (hereinafter “DFS’s October 30 letter”).<sup>2</sup> The letter states that DFS learned of “some recent activities . . . which [they] feel may have been in contravention [of] the procedures stipulated under the RFP as well as violative of the spirit of the Guam procurement laws.” Despite DFS’s knowledge of Lotte’s

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<sup>1</sup> GIAA notes that in its Protest, DFS complains that Lotte allegedly had direct contact with GIAA Board members, in violation of RFP Section II.C (“Single Point of Contact”), which required all proposers to direct communications to Franklin Taitano as GIAA’s single point of contact. As discussed below, DFS repeatedly contacted employees of GIAA in violation of this requirement. Indeed, DFS addressed this October 5, 2012 complaint and its subsequent complaint letters directly to GIAA’s Executive Manager, rather than to Mr. Taitano, as required by the RFP. DFS’s position as the incumbent specialty retail concessionaire does not give it special privileges to contact directly the Executive Manager, Board members, or others at GIAA regarding the RFP.

<sup>2</sup> We note that this letter constituted a violation of Section II.C of the RFP (“Single Point of Contact”), which restricts proposers from communicating with any GIAA Staff, Board member or officials regarding the RFP.

alleged conduct, DFS did not style its letter a “protest”; instead, DFS commended GIAA staff and management on “the professional and thorough manner in which they have handled the bid process” and expressed confidence that they would handle the situation appropriately.

DFS’s October 30 letter described the alleged activities as follows:

- On September 26th a delegation from Guam organized by [the Guam Visitors Bureau] sponsored a trip to Korea to celebrate the inaugural Jeju Air flight to Guam. Two GIAA Board Directors were participants in that delegation.
- The delegation met with high-ranking officials of the Lotte Group.
- In addition to touring the Lotte off-Airport Duty Free and Department stores, GIAA Board Members also extensively toured the Lotte Airport store prior to their departure from Korea.
- Gifts were given by Lotte to GIAA Board Members.

Comparing DFS’s October 30 letter to DFS’s allegations raised in the Protest, it is obvious that the substance of the two complaints is nearly identical; however, DFS did not characterize its October 30 letter as a formal “protest,” which would have halted the process. DFS characterized its October 30 letter as an expression of “concern” rather than a formal “protest”.

During the course of its investigation, GIAA has learned that DFS knew about the facts underlying its Protest no later than October 1, 2012, but did not file its Protest until over six months later, on April 23, 2013. On October 1, Felix Reyes, an employee of the Guam Visitors Bureau (“GVB”) had lunch with Tak Takano, who is DFS Guam’s Vice President of Travel Industry Marketing. Mr. Reyes is a former DFS employee with current close relations with DFS personnel. Mr. Takano recorded his conversation with Mr. Reyes during which they discussed the visit to the Lotte Store during the Korea trip. In that conversation, Mr. Reyes paraphrased the text of a September 18, 2012 email exchange in which GVB’s Nathan Denight suggested that GVB use John Calvo’s contacts with Lotte to get a good room rate at the Lotte Hotel, and Mr. Reyes’ recommendation that they refrain from scheduling a meeting with Lotte due to the pending RFP. Mr. Reyes also recounted that the Delegates visited the Lotte store and received a tour; that the Delegates received 20% discount shopping cards and “gifts”; and that the Delegation was greeted by Lotte staff at the Incheon airport for their departure. Mr. Reyes confirmed, however, that the GIAA RFP was “never” mentioned by Lotte or anyone else during this visit.

Other facts demonstrate that DFS had knowledge of the allegations that form the basis of its Protest over six months before it filed its Protest. On October 9, 2012, during an unrelated

presentation at GIAA, GVB's then-General Manager, Joann Camacho, informed Airport Deputy Executive Manager Peter Roy Martinez that two GIAA Directors received gifts from Lotte while in Korea for the Jeju Air inaugural flight.<sup>3</sup> Mr. Martinez later informed GIAA Executive Manager Charles Ada about his conversation with Ms. Camacho, and then telephoned Chairman Santos to ask about the alleged gifts. Chairman Francisco Santos<sup>4</sup> stated that he had not received any gifts from Lotte. On October 24, 2012 at the GIAA Mag Pro Photoshoot, Mr. Martinez approached Chairman Santos and Director Rosalinda Tolan and informed them that Lotte was one of the participants of the pending specialty retail RFP, and reminded them that any communication with the participants of the RFP may be a violation of the RFP and Guam procurement rules.

After receiving DFS's October 30 letter, GIAA conducted an investigation of the events that transpired during the Korea trip to determine whether a violation of the procurement law had occurred. (For the sake of clarity, GIAA's investigation that took place in November 2012 will be referred to as the "initial investigation"; the initial investigation and the recently concluded investigation will be collectively referred to as "the investigation".) As part of its initial investigation, GIAA interviewed the following people: Mr. Martinez, Chairman Santos, Director Tolan, Mr. Denight, and Mr. Mesa. Mr. Reyes was also asked to be interviewed, but he refused to be interviewed at the time without GVB legal counsel present. Requests made at that time to GVB legal counsel for a narrative from Mr. Reyes of the events that took place during the Korea trip were to no avail. GIAA also reviewed GIAA travel authorizations for Chairman Santos, Director Tolan and Officer Paul Santos (the Governor's security detail), and the Jeju Inaugural flight trip itinerary provided by Mr. Denight.

After completing its initial investigation of the Korea trip, GIAA concluded that none of the involved parties had violated Guam law. However, in response to the concerns raised in the media regarding the events surrounding the trip, as well as in DFS's October 30 letter of concern, in an abundance of caution Chairman Santos and Director Tolan decided to abstain from participation in the GIAA Board approval process related to the RFP. Upon completing its investigation and determining that no ethical violations had occurred during the Korea trip, GIAA proceeded to prepare for presentation of the RFP results to the Board.

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<sup>3</sup> Ms. Camacho later resigned from her position at GVB and is currently working for DFS and may have already been working as a consultant for DFS or accepted a management position at DFS at the time of this conversation. We note that if Ms. Camacho was already consulting for DFS or retained by DFS, then this communication to an employee at GIAA regarding the RFP constituted a violation of Section II.C of the RFP ("Single Point of Contact"), which restricts proposers from communicating with any GIAA Staff, Board member or officials regarding the RFP.

<sup>4</sup> GIAA Board Director Francisco Santos became the GIAA Board Chairman following the resignation of then-GIAA Board Chairman Michael Ysrael, and therefore he is referred to as "Chairman" Santos throughout, despite the fact that he did not assume the chairmanship until November 27, 2012.

**C. The Evaluation Committee, with the Advice of an Expert Aviation Consultant, Thoroughly, Independently and Fairly Vetted the Proposals**

The November 2012 investigation into DFS's October 30 letter delayed the process and GIAA did not issue any formal or informal response to DFS's October 30 letter. On November 28, 29 and December 5, 2012, the Evaluation Committee separately interviewed each of the proposers. GIAA's Executive Manager and legal counsel attended the interviews, but they did not participate in the deliberative process of the Evaluation Committee and had no input into the Evaluation Committee's decision.

Following the interviews with the proposers, the Evaluation Committee delved further into the review process.<sup>5</sup> In late December 2012 and early January 2013, the Evaluation Committee requested that GIAA engage its independent financial consultant, Leigh Fisher, to analyze the financial components of the proposals, particularly the Minimum Annual Guaranteed Rent ("MAG"), percentage rent and capital expenditures. With offices worldwide, Leigh Fisher is a global consulting firm with over 60 years of experience in the aviation industry. Leigh Fisher advises its aviation-sector clients in financial, facilities, operational and environmental planning and analysis and other related matters. In January 2013, GIAA engaged Leigh Fisher to prepare an analysis of the MAG, percentage rent and capital expenditures presented by each of the proposers so that the members of the Evaluation Committee and, eventually, the Board could be comparing the financial aspects of the proposals on an apples-to-apples basis.

In February 2013, discussion took place among GIAA management about whether to have the RFP presented to the Board of Directors at the February meeting. In anticipation of the presentation of the Evaluation Committee ranking results to the GIAA Board of Directors for approval in February, a memorandum was issued to the Board members explaining the possible grounds for potential conflicts of interest and requesting that they disclose any conflicts of interest that would preclude them from taking official action with regard to the RFP. None of the Board members reported any conflicts of interest. The Evaluation Committee likewise submitted acknowledgements that they would keep the RFP process confidential and confirming they were not aware of any conflicts of interest that would preclude them from evaluating the proposals.

It eventually proved unfeasible to bring the Evaluation Committee's recommendation to the Board at the February meeting. First, the Evaluation Committee required further clarification from the proposers and thus was unable to complete its evaluation in time for the February meeting. Second, in January, GIAA had directed its independent consultant, Leigh Fisher, to

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<sup>5</sup> Further unforeseen delays in the procurement process occurred. In December, Senator Ada and Congresswoman Bordallo separately submitted questions to GIAA regarding the RFP process, which required GIAA to consult with outside advisers before responding.



provide an analysis of the financial components of the proposals. While analyzing the financial components of the proposals, Leigh Fisher informed GIAA on several occasions in February and March that additional clarification was necessary to complete its analysis. Accordingly, between February 5 and March 13, 2013, GIAA requested clarification from the proposers regarding certain financial information in their proposals and received the proposers' final responses on March 18. GIAA provided the responses to Leigh Fisher, which finalized its report and submitted it to the Evaluation Committee on March 21, 2013.

Once the Evaluation Committee received the Leigh Fisher report, it was in a position to complete its evaluation of the proposals. Between March 25 and March 27, 2013, the Evaluation Committee scored each of the proposals based on the following criteria:

- Facility Design & Capital Investment (20 points)
- Concepts & Theme and Merchandise & Marketing Plan (20 points)
- Experience, Qualifications, and Financial Capability (20 points)
- Management & Operations Plan (20 points)
- Annual Rent (MAG and Percentage Rent) & Projected Sale (20 points)

Between March 25 and 27, 2013, the Evaluation Committee members submitted their evaluation score sheets to the single point of contact for the RFP, Franklin P. Taitano, for tabulation. Based on a tabulation of the rankings, the Evaluation Committee ranked Proposer A the number one proposer. In fact, each member of the Evaluation Committee individually ranked Proposer A the most qualified so it was unanimous among the members of the Evaluation Committee that Proposer A was the most qualified firm to develop and operate the specialty retail concession at the Airport.

The Evaluation Committee did not rank DFS as second most qualified.

Prior to the March 28, 2013 Board meeting and in anticipation of the RFP being presented to the Board for action, the GIAA Board members who were to take action on the RFP, namely Vice-Chairman Torres and Directors Gerber, Alcorn and Untalan, were each given an opportunity to review the four proposals. All four Directors executed a Non-Disclosure Acknowledgement, acknowledging the requirements under the law to keep the RFP process confidential. Directors Untalan, Gerber and Alcorn reviewed the proposals, but Vice-Chairman Torres declined, deciding instead to place his confidence in the evaluation conducted by the Evaluation Committee. All four Directors were also provided with the analysis conducted by Leigh Fisher and copies of the executive summaries contained in each of the four proposals. Chairman Santos and Director Tolan abstained from the discussion and voting and did not review any of the proposals or the Leigh Fisher report.

**D. GIAA Instituted a Procedure for the Board's Consideration and Vote on the Proposals that Maintained the Integrity and Fairness of the Competitive Proposal Process**

GIAA continued to take steps to ensure the integrity and fairness of the competitive process, including the designation of letters to render the proposers' rankings anonymous to the Board members. On March 28, 2013, prior to the GIAA Board regular meeting, GIAA's Supply Management Administrator, Franklin P. Taitano, and GIAA legal counsel, Janalynn Cruz Damian, met to assign letter designations to the four proposers who had submitted proposals in response to the RFP. The letter A, B, C, or D was assigned randomly by lottery to each proposer starting with the first proposal received. A memorandum was then prepared and signed by the Supply Management Administrator memorializing the letter designations given to each proposer and this memorandum was included in the procurement record for the RFP.

The Board twice considered the Evaluation Committee's rankings. On March 28, 2013, the GIAA Board held its regular meeting. When the RFP was presented to the GIAA Board, Chairman Santos and Director Tolan announced that they were abstaining from participating in any discussion or vote on the RFP for the aforementioned reasons.<sup>6</sup> The ranking order was presented to the Board, along with the recommendation of GIAA's Evaluation Committee. When the evaluation results and ranking order were presented, the four proposers were identified in the results and ranking only by their letter designations. During the presentation, it was reported that the Evaluation Committee had completed its evaluation, the proposals had been ranked by the Evaluation Committee, and the rankings had been tabulated. As a result of the tabulation of the rankings, the proposers were ranked as follows:

1. Proposer A
2. Proposer D
3. Proposer C
4. Proposer B

It was stated that based on the tabulation of the Evaluation Committee's ranking of the proposers, Proposer A was ranked number one and was the most qualified firm to perform the required services in accordance with the criteria set forth in the RFP. Also, Proposer A was determined to have met the standards of responsibility and responsiveness outlined in the Guam Procurement Regulations. It was therefore recommended that the GIAA Board approve the ranking of the proposers as determined by the Evaluation Committee, give Proposer A the first opportunity to negotiate the Specialty Retail Concession Agreement, and in the event those

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<sup>6</sup> During the meeting, Director Torres characterized their abstentions using the term "recusals," but Chairman Santos and Director Tolan remained in attendance at the meeting.

negotiations proved unsuccessful, commence negotiations with the next highest ranked proposer – Proposer D.

After this presentation, the non-abstaining Board members asked a number of questions regarding the method and process used to evaluate the proposals. Director Torres stated that he was “recusing” himself from participating in the matter because at the time he was not comfortable with only three directors voting to approve the Evaluation Committee’s rankings of the proposals<sup>7</sup> or with the letter designations given to each of the proposers. Accordingly, the GIAA Board tabled the matter pending further clarification from GIAA legal counsel regarding the propriety of using letter designations in connection with the Board approval process.

DFS continued its practice of complaining to GIAA about the competitive proposal process without making a formal “protest.” On April 11, 2013, DFS submitted another letter of concern addressed to GIAA Board Directors Lucy Alcorn, Martin Gerber, Jess Torres, and Edward Untalan.<sup>8</sup> The letter contained more detailed allegations of the same conduct alleged in DFS’s October 30, 2012 letter. In the April 11 letter, DFS expressed its view that GIAA and its legal counsel had not done enough to address DFS’s concerns, but that “the process of the RFP must continue to move forward.” The letter did not state that it should be treated as a protest regarding the Korea trip, and the letter did not express any concerns regarding the anonymous letter designation process, even though DFS representatives and its counsel were present at the March 28 Board meeting.

All of the voting Board members, and Acting Chairman Torres, satisfied themselves that the confidential letter-designation process was a way to ensure the integrity of the evaluation and voting process. On April 12, 2013, the GIAA Board held a special meeting where the evaluation results were presented again, along with the ranking order of the proposals prepared by the Evaluation Committee and its recommendation to proceed with negotiations with Proposer A. Directors Santos and Tolan again stated that they were abstaining from participating in any discussion or vote on the RFP. As vice-chairman, Director Torres again chaired the agenda item relating to the RFP. The non-abstaining Board members, constituting a quorum and by unanimous vote, approved the ranking of the proposers as determined by the Evaluation Committee and approved the recommendation of the Executive Manager to award the contract to

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<sup>7</sup> As acting chairman, Director Torres could not vote on the matter unless his vote would affect the result (e.g. in the event of a tie vote or of his vote in the negative resulting in a tie). DFS also points to Director Torres’ comments during the meeting that the anonymous proposer process made him “queasy” and it appeared to be a “magical process” as proof that the process was improper. However, at the following meeting Director Torres chaired the meeting and expressed no such concerns.

<sup>8</sup> We note that this DFS letter addressed to these Board members constituted a violation of Section II.C of the RFP (“Single Point of Contact”), which restricts proposers from communicating with any GIAA Staff, Board member or officials regarding the RFP.

Proposer A and to give Proposer A the first opportunity to negotiate the Specialty Retail Concession Agreement. The GIAA Board also approved the recommendation that in the event that the negotiations with Proposer A proved to be unsuccessful, GIAA should commence negotiations with the next highest ranked proposer, Proposer D. (Proposer D is not DFS.) After GIAA Board approval, it was announced that Proposer A was Lotte.

On April 19, 2013, DFS made a request for information from GIAA under the Sunshine Reform Act of 1999, 5 G.C.A. Sections 10101, *et seq.* (the "Sunshine Act"), seeking the Evaluation Committee's score sheets. On April 23, 2013, DFS submitted its first Protest letter to GIAA, demanding that Lotte's proposal be disqualified, deemed nonresponsive, or put on hold and that Lotte should be deemed not to be a responsible proposer. On April 25, 2013, GIAA responded to DFS's Sunshine Act request. On May 2, 2013, DFS submitted "supplemental information" in support of its Protest. On May 2, 2013, GIAA requested that DFS provide documents and the identities of witnesses in support of its Protest. On May 7 and May 8, 2013, DFS responded and provided GIAA with documents and the identities of witnesses it claims support its Protest.

## II. ANALYSIS

### A. GIAA Denies the Protest Because DFS Lacks Standing to Assert a Protest Because DFS Is Not A Party "Aggrieved" By GIAA's Ranking of Lotte As The Most Qualified Proposer

In order to pursue a protest, DFS must have standing. When standing is at issue, "the relevant inquiry is whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision." *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976). Under Title 5, Section 5425 of the Guam Code Annotated, "[a]ny actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to ... the head of the purchasing agency." Therefore, in order to protest GIAA's selection of Lotte, DFS must be an "aggrieved person." 5 GCA § 5425(a).

A disappointed bidder is an aggrieved person with standing to challenge the results of a competitive bidding process only if it can show that it would likely have received the contract but for the alleged conduct. *See e.g. I.C.S. Illinois, Inc. v. Waste Mgmt. of Illinois, Inc.*, 403 Ill. App. 3d 211, 225 (2010) (collecting cases) ("We agree with the conclusion reached in these cases that a plaintiff cannot establish standing to challenge the result of a bidding competition without establishing that he would have been successful but for defendants' conduct"); *Steelgard, Inc. v. Jannsen*, 171 Cal. App. 3d 79, 93 (1985) (protesting party lacked standing because it presented no evidence that it would have been the low bidder if its protest was successful).

A similar result is found under the federal Tucker Act, 28 U.S.C. §1491, even though the Tucker Act confers standing on any "Interested Party" and does not require that a party be "aggrieved."

Under the Tucker Act, the Federal Circuit has consistently held that a disappointed bidder has no standing to sue unless it can show that “there was a substantial chance that [it] would receive an award—that it was within the zone of active consideration.” *CACI, Inc.–Fed. v. United States*, 719 F.2d 1567, 1574–75 (Fed. Cir. 1983) (quoting *Morgan Business Assocs., Inc. v. United States*, 619 F.2d 892, 896 (Fed. Cir. 1980)); see also *Three S Consulting v. U.S.*, 104 Fed. Cl. 510, 519 (2012) (“To demonstrate prejudice in post-award bid protests... plaintiff must show that but for the error, it would have had a substantial chance of securing the contract [quotation omitted].”); cf. *TRW Env'tl. Safety Sys., Inc.*, 18 Cl. Ct. 33, 69 (1989) (finding that procurement defects adversely affected plaintiff's chances of selection and therefore that it had established prejudice).

Under the present circumstances, DFS does not have standing to bring a protest because DFS has not established that it is an “aggrieved party.” DFS was not ranked as the second most qualified proposer. Therefore, DFS has presented no evidence that, but for the conduct alleged in its protest, DFS would have been selected as the most qualified proposer or that it had a substantial chance of being selected. GIAA is obligated under the Guam Procurement Act to select the most qualified Proposer. 18 GCA § 5211(g).

It is undisputed that Lotte was unanimously ranked as the number one out of four proposers. It is also undisputed that the Evaluation Committee did not find DFS to be the second most qualified Proposer. GIAA's investigation has not uncovered any irregularities in the evaluation process. Accordingly, even if DFS's challenge to GIAA's decision were upheld, DFS is not an “aggrieved person” because it has not shown – and cannot show – that it would have been the successful Proposer but for Lotte's alleged conduct, or that it would have had a substantial chance of procuring the contract. GIAA denies DFS's Protest because DFS lacks standing to bring this Protest.

**B. GIAA Denies the Protest Because DFS Waived its Right to Protest by Making its Protest More than Fourteen Days After it Knew the Facts, or Should have Known of the Facts, Giving Rise to Its Protest**

DFS asserts several grounds for its protest arising from alleged conduct occurring in September 2012 and March 2013, but it did not submit a formal letter of protest to GIAA until April 23, 2013 – after GIAA had already announced Lotte as the winning proposer. In order to protest GIAA's selection of Lotte's proposal, DFS must comply with the requirements of the Guam Procurement Act, which DFS did not do.

A protestor waives its right to protest if it does not file a protest within “fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto.” 5 GCA § 5425(a). Protests are required to be submitted in the form prescribed in 2 G.A.R. § 9109(c)(3). “Protests filed after the 14 day period shall not be considered.” 2 G.A.R. § 9109(b)(1); cf. *MCM Const., Inc. v. City & Cnty. of San Francisco*, 66 Cal. App. 4th 359, 381-83 (1998) (“[I]f the contractor

does not immediately lodge a protest in writing to the public entity, the bid protest right may be waived"). It is fundamentally unfair to the other bidders to allow a protestor to wait and "see which way the wind was blowing" before submitting a protest. *See e.g. Apple v. Jewish Hosp. & Medical Ctr.*, 829 F.2d 326, 334 (2d Cir. 1987) (noting that a "movant may not hold back and wait, hedging its bets against the eventual outcome"); *Phillips v. Amoco Oil Co.*, 799 F.2d 1464, 1472 (11th Cir. 1986) ("Counsel, knowing the facts claimed to support a § 455(a) recusal for appearance of partiality may not lie in wait, raising the recusal issue only after learning of the court's ruling on the merits").

Here, while DFS now contends in its April 23, 2013 letter that its Protest was a continuation of an earlier protest, DFS did not submit anything that complied with 2 G.A.R. § 9109(c)(3) before April 23, 2013, and DFS was careful not to use the word "protest" in any of its earlier correspondence, instead characterizing its correspondence as "letters of concern." DFS also never requested an automatic stay; on the contrary, in its April 11, 2013 letter, DFS insisted, "the process of the RFP must continue to move forward." Therefore, DFS's protest letter of April 23, 2013 is deemed to be DFS's first notice of protest. This Protest was filed past the statutory deadline and cannot be considered.

On April 23, 2013, DFS submitted 12 Alleged Facts that provide the basis for its Protest. Facts 1-9 concern alleged conduct that took place in September 2012. It is undisputed that DFS was aware of each of the underlying conduct giving rise to Alleged Facts 1-9 no later than October 1, 2012, when one of its Vice Presidents, Tak Takano, recorded a statement by Felix Reyes regarding the Korea trip and the visit to the Lotte Store and its duty free shops at Incheon Airport. This recorded statement formed the basis of DFS's October 30 letter to the Executive Manager of GIAA to "raise concerns" about the same conduct. Alleged Facts 10-12 concern the anonymous letter designation procedure used to present the ranking results to the Board. It is undisputed that DFS was aware that GIAA intended to use the anonymous letter designation procedure no later than March 28, 2013, when it was announced during a public meeting of GIAA Board of Directors, which DFS representatives and legal counsel attended. DFS knew of the letter-designation process for 26 days before it filed its Protest.

Therefore, DFS did not submit a protest in conformity with the requirements of the Guam Procurement Act and related regulations. DFS waited until April 23, 2013 to submit its Protest, over six months after it learned about the Korea trip and 26 days after it learned about GIAA's use of the letter-designation procedure to conceal the identities of the proposers during the Board's vote on the Evaluation Committee's recommendation. It is undisputed that all twelve of its Alleged Facts submitted as the basis of DFS's Protest were known to DFS more than 14 days

before DFS submitted its Protest. DFS thereby waived its right to bring its Protest and its Protest is untimely and is denied on that basis.<sup>9</sup>

**C. GIAA Denies the Protest Because GIAA Has Deemed Lotte to be a Responsible Proposer and DFS Has Not Met its Burden of Proof to the Contrary**

GIAA is justified in denying DFS's Protest on the ground described above. However, for the sake of completeness, GIAA also considered and investigated DFS's other allegations. The majority of DFS's Protest involves a trip by government officials to commemorate the inaugural flight of an airline that had established new service to Guam. These diplomatic efforts to increase tourism and investment in Guam are often attended by the Governor and other highly placed officials.

To find that Lotte is not a responsible Proposer, DFS would need to establish that during the Korea trip Lotte engaged in improper conduct in an attempt to influence the award of the concession agreement to Lotte. For the reasons set forth below, GIAA finds that Lotte did not engage in any improper conduct in an attempt to influence the award of the contract and that Lotte did not submit a false affidavit in connection with its RFP.

**1. The Guam Visitors Bureau Organized The Korea Trip to Commemorate the Inaugural Flight of Jeju Air**

In about September 2011, the Guam Visitors Bureau ("GVB") began meeting with representatives from various South Korean airlines including Jeju Air, Eastar Jet, and T'Way Airlines, to explore their interest in establishing service between South Korea and Guam. Jeju Air ultimately decided to add a route between Seoul and Guam and scheduled its inaugural flight to Guam for September 27, 2012. In or about June 2012 – prior to GIAA's issuance of the RFP – GVB and Jeju Air began making plans to commemorate Jeju Air's inaugural flight to Guam. On September 3, the GVB Board voted to approve the expenditures for the commemoration trip from Seoul to Guam, which included travel costs for the Governor, First Lady, Senator Tina Muna Barnes, GVB Chairman Monte Mesa, GVB Deputy General Manager Nathan Denight, a Miss Guam, and a GVB Korea Marketing Officer.

Before September 10, 2012, GVB extended an invitation to members of the GIAA Board of Directors to join the delegation on board the Jeju Air inaugural flight scheduled to land at the A.B. Won Pat International Airport and attend the Korea trip, including a ribbon-cutting ceremony to be attended by the Governor and First Lady. Like other similar trips, it was hoped

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<sup>9</sup> In DFS's most recent correspondence, it seeks to re-characterize its earlier letters as being part of an ongoing protest. These after-the-fact characterizations cannot change the fact that DFS should have filed a formal protest within 14 days after it learned of the facts giving rise to its Protest. It did not.

by GVB that this trip could help promote Guam to foreign investors. GIAA Board Chairman Santos and Director Lynda Tolan volunteered to participate.

It is significant that none of the members of the RFP Evaluation Committee were invited on the trip. The trip would have occurred whether any GIAA Board members attended or not, because the purpose of the trip was to celebrate Jeju Airline's inaugural flight to Guam and to generally promote Guam to the Korean visitor market and potential Korean investors in Guam. The trip had nothing to do with the RFP and none of the remaining Delegates had any involvement whatsoever in the RFP process. The trip was organized by GVB and the primary Guam Delegate was the Governor.

Because Korea is seen as a growing and important segment of Guam's visitor industry and a source of overseas investment in Guam, members of GVB staff sought to take advantage of this trip to Seoul to increase their connections to Korean businesses. GVB's Deputy General Manager, Nathan Denight, knew that members of the Guam business community, including John Calvo of Mid Pacific Distributors Inc. ("Mid-Pac") had contacts with Korean businesses that own and build resort hotels. In an email dated September 18, 2012 from Mr. Denight to GVB employee Felix Reyes, and copied to John Calvo and GVB General Manager Joann Camacho (among others), Mr. Denight suggested that GVB contact "John Calvo (brother of GVB Board Member Champ Calvo/Mid Pac Guam Owner)" who "has connections with Lotte in Korea and may be able to secure us a great room rate in Seoul." Mr. Reyes responded that the Delegation's rooms at the Westin Chosun have been confirmed, and wrote that because "Lotte is bidding for the Guam airport duty free concession," arranging a meeting "may pose a conflict as a [government] agency at this time, especially for the Governor."

Mr. Denight, in response to the information that GIAA was currently engaged in an RFP for the duty free concession at the Airport agreed to forego seeking a discount at the Lotte hotel, and to stay at the Westin Chosun. Mr. Denight explained that his reason for seeking the meeting with Lotte was part of GVB's efforts to encourage investment in Guam, especially "hotels, theme parks and other developments for Guam." Mr. Denight did not give as a reason the pending GIAA specialty retail RFP. In response to these emails, Mid-Pac's John Calvo responded "Nathan[,] This is getting too complicated. I'll let [Lotte] know the group is not available to meet." The proposed Lotte meeting was not made part of GVB's final trip itinerary.

On September 26-27, 2012, a delegation from Guam participated in the Korea trip. The delegation consisted of: the Governor and First Lady, Mr. Denight, GVB Board Chairman Monte Mesa, Senator Tina Muna Barnes, Mr. Reyes, Miss Guam World Jeneva Bosco, Chairman Santos, and Director Tolan (referred to herein collectively as the "Delegation" or the



“Delegates”).<sup>10</sup> Upon their arrival in Korea on September 26, 2012, the Delegates proceeded to the Westin Chosun Hotel, where the Delegates stayed during their trip.

GIAA calls attention to the fact that none of the members of the Evaluation Committee were included in the Delegation.

When evaluating the facts as disclosed by GIAA’s investigation, GIAA has considered the allegations of DFS’s Protest in order to determine whether the facts uncovered by GIAA’s investigation are supported or controverted with documentary evidence or the statement of a credible witness. In its Protest, DFS alleges “facts established by DFS’ own internal investigation” as the bases for its Protest. These alleged facts are set forth in DFS’s April 23, 2013 letter in paragraphs numbered 1 through 12 (each an “Alleged Fact” and collectively, “Alleged Facts”). GIAA has reviewed DFS’s May 2 and May 7 letters and finds that these letters do not make any additional contentions of fact that were not identified in, or embraced within, DFS’s April 23, 2013 letter to GIAA. Where DFS alleged facts challenging Lotte’s status as the most qualified proposer, GIAA found that DFS’s allegations were not supported by the evidence.

In Alleged Fact No. 1 DFS contends, in part, “Two members of the GIAA board of directors, Chairman Francisco Santos and member Rosalinda Tolan, were members of a delegation sponsored by the GVB which participated in the inaugural Guam flight of Jeju Air which took place on September 27, 2012. The delegation included a number of other persons highly influential in the Guam tourism industry.” GIAA’s investigation supports this portion of Alleged Fact No. 1. DFS further contends in Alleged Fact No. 1, “The date [of the trip] is significant given that Lotte’s proposal in response to the RFP was due on October 17, 2012.”

GIAA’s investigation supports DFS’ contention that the Korea trip occurred on September 26-27, 2012, which was before the proposers’ responses to the RFP were due as a result of the submission deadline being extended from September 21, 2012 for reasons unrelated to the Korea trip, but GIAA’s investigation did not uncover any connection between the date of this GVB-organized trip to celebrate the inaugural flight of Jeju Air from Seoul to Guam and the deadline for RFP responses, and DFS has not provided any such evidence. In fact, GIAA’s investigation has confirmed that the date of the inaugural flight, September 27, 2012, was determined by Jeju Air. This latter portion of DFS’s Alleged Fact No. 1 regarding the date of the trip as being “significant” is speculation and innuendo, unsupported by any evidence.

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<sup>10</sup> The Governor was also accompanied by a security detail.

**2. The Delegation Visited the Lotte Hotel and Store in Seoul  
During the Korea Trip, but Never Discussed the GIAA or the  
RFP**

DFS's main complaint, about which it has been aware since at least October 1, 2012, arises out of the events that took place on September 26. That day, after arriving in Seoul, checking into their hotel rooms and attending a business development event, the Delegates attended a lunch meeting with representatives of Korea Airlines. GVB had rented the services of a chartered bus or van to transport the Delegates to meetings during their stay. During the bus ride from this lunch to the Westin Chosun, it appears that Director Tolan suggested to Mr. Reyes that the Delegation go shopping during their free time after lunch. Versions of how they arrived to go shopping differ in immaterial ways. According to Mr. Denight, he suggested that the Delegation go to the Lotte Department Store, because it was within walking distance of the Westin. According to Mr. Mesa, the bus took them to the Westin and they asked the bus driver for a nearby location to go shopping. The driver suggested the Lotte Department Store, which was on the same block as the Westin. The bus driver offered to drive anyone who wanted to go. Mr. Henry Lee, GVB's agent in Seoul, got off the bus at the Westin. The bus driver drove most or all of the remaining Delegates to the Lotte Hotel, which was connected to the Lotte Department Store. Mr. Denight stated that he called one of his contacts at Lotte and told him that the Governor and his delegation would be coming to the Lotte Hotel and the Lotte Department Store. Mr. Denight said he made this phone call because the Governor was traveling with a security detail and he wanted to warn the hotel and store that there would be security present. Both Mr. Mesa and Mr. Denight stated that they believed this trip to the Lotte Hotel and Department Store would "kill two birds with one stone" because the GVB representatives wanted to visit and inspect the Lotte Hotel and some of the Delegates wanted to go shopping.

DFS contends in Alleged Fact No. 2, in part, "During their stay in Seoul on September 26, 2012, arrangements were made for the GVB delegation to tour the main downtown store of Lotte where they were personally greeted by the President of Lotte." GIAA's investigation confirmed that "during their stay," but not before their stay, in Seoul on September 26, 2012, "arrangements were made" by Mr. Denight for the GVB Delegation to tour the Lotte Hotel and the main downtown Lotte Store, which is connected to the Lotte Hotel. This tour was not on the published agenda of the Delegation, but was it was added by GVB on the afternoon of September 26 to accommodate some of the Delegates' desire to shop. It appears that the president of the Lotte Department Store did, at some point, greet the Governor and the Delegation at the store.

DFS contends in Alleged Fact No. 2, in part, "This meeting was suggested because John Calvo, brother of GVB Board member Eduardo 'Champ' Calvo, had 'connections' with Lotte, and he sought to set up 'a meeting' with the Lotte group." GIAA's investigation uncovered no support for this contention, other than the fact that in an email dated September 18, 2012, Mr. Denight suggested setting up a meeting with Lotte representatives, but as discussed above from the

contemporaneous email record, Mr. John Calvo concluded, "Nathan[,] This is getting too complicated. I'll let [Lotte] know the group is not available to meet." GIAA's investigation did not uncover any facts supporting the allegation that John Calvo set up a meeting with the Lotte Group, and DFS has not provided any such facts. Indeed, the proposed Lotte meeting was not made part of GVB's trip itinerary.

DFS contends in Alleged Fact No. 2, in part that, "GVB staff, including GVB Korea Marketing Officer Felixberto S. Reyes, expressed concern about the propriety of the meeting in light of the fact that GIAA had put out the RFP and Lotte was known to be an interested proposer." As discussed above, GIAA's investigation revealed that Mr. Reyes stated in a September 18 email to Mr. Denight that meeting with Lotte during the trip "may pose a conflict as a [government] agency at this time, especially for the Governor." Although, a visit to the Lotte's store was included in the Governor's travel itinerary, no such visit was included in GVB's final itinerary.<sup>11</sup>

DFS contends in Alleged Fact No. 2, in part that, "DFS is also aware of facts indicating that GVB Board Chairman Monte Mesa was at the same time providing consulting services to Lotte or assisting it in obtaining consulting services from third parties in connection with the RFP." GIAA's investigation has revealed that Mr. Mesa was not providing consulting services to Lotte at the time, but he did provide Lotte with names of other people on Guam who might be able to consult for Lotte. Mr. Mesa also informed GIAA that he assisted other proposers in much the same way by providing names of other people on Guam who might be able to be a part of their local teams. Mr. Mesa apparently made such referrals as an ordinary business practice accommodation with no financial interest or connection with any of the proposers.

DFS contends in Alleged Fact No. 3, in part, "During one of the 'free' periods on the delegation's agenda, they were driven to the Lotte department store, where they were met by Lotte staff and escorted to the duty free area on the top floors of the store building. They were personally greeted there by the President of Lotte." GIAA's investigation revealed that most of the Delegates were bused to the Lotte Hotel from the nearby Westin Chosun. Upon arriving at the hotel, they viewed the lobby and were greeted by a representative of the Lotte Department Store. The Delegates went from the hotel to the adjacent department store. The Delegation was accompanied by a Lotte representative while they were shopping. At one point during the visit, the president and the managing director of the business development division of Lotte Duty Free greeted the group. However, Chairman Santos and Director Tolan were not introduced to the president or managing director.

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<sup>11</sup> It is highly significant that GIAA enjoys the status of a public corporation and autonomous instrumentality. As an autonomous entity, GIAA exercises independence in its concession solicitations and is not required to obtain approvals from the Governor on the final concessionaire. Accordingly, the Governor and GVB have absolutely no involvement in any GIAA concession or procurement matters and they had no say in the procedures or outcome of the specialty retail RFP that is the subject of DFS's Protest.

GIAA has uncovered no evidence that Lotte was aware that the Delegation included GIAA Board members or that there was any discussion of the RFP with Lotte at any time during the Korea trip. GIAA's investigation included interviews of most of the Delegates. No witness has stated that the Airport, the RFP or the specialty retail concession was discussed during this visit to the Lotte Hotel and Department Store. Even Mr. Reyes, who has current close relations with DFS and who on October 1, 2012 gave a recorded statement to a DFS officer, Tak Takano, about the Korea trip, stated that there was "never" any discussion of GIAA or the RFP during the trip. Lotte, through its counsel, has denied that the Lotte representatives knew that there were GIAA Board members in the Delegation and has denied that the RFP or the specialty retail concession was discussed during this visit to the Lotte Hotel and Department Store. This latter statement by Lotte's counsel is consistent with the recollections of all of the witnesses interviewed.

DFS contends in Alleged Fact No. 3, in part, "Shopping cards were provided by Lotte to the members of the delegation, including the GIAA directors." GIAA's investigation revealed that shopping cards offering a twenty percent (20%) discount for purchases made on that day were made available to the Delegates. Chairman Santos and Director Tolan do not recall any shopping cards being distributed. Ms. Bosco recalls Lotte staff distributing flyers, which she declined to accept because she did not understand what they were because they were written in Korean. Mr. Mesa and Mr. Reyes have described these shopping cards as ones similar to shopping cards DFS routinely distributes to customers at its stores in Guam.

DFS has also contended that "valuable Coach products" were given by Lotte to Delegation members, including GIAA board members." (DFS Supplemental Information Letter, dated May 2, 2013 at p. 5.). GIAA's investigation has uncovered no evidence that "valuable Coach products" were given to any Delegates, including the GIAA Board members, nor has DFS provided any such evidence, although it is true that two members of the Delegation did shop at the Coach section of the Lotte Store.

GIAA's investigation revealed that while in the Coach section of the Lotte Department Store, Chairman Santos attempted to purchase a purse for his wife. Upon handing his credit card to the Lotte cashier, he was informed by the cashier that Mr. Mesa "will take care of it." Chairman Santos did not purchase the purse and left the store empty handed. According to Mr. Mesa, he informed Chairman Santos that he would pay for the purse because he was also purchasing an item at the same time, and he understood that Chairman Santos would reimburse him later. Mr. Mesa arranged with Lotte to have the purchased items delivered to the Incheon Airport at the time of the Delegates' departure so that they would not have to carry them and so that Mr. Mesa could investigate whether the same items were cheaper if purchased at the Incheon Airport. According to Mr. Mesa, he delivered the purchased purse to Chairman Santos prior to boarding the return flight to Guam at the Incheon Airport. According to Chairman Santos, Mr. Mesa handed him a bag containing a purse as he boarded the plane, but he did not realize at the time that Mr. Mesa had purchased the purse. Later when he returned to Guam, Chairman Santos was

incorrectly informed that the bag he received from Mr. Mesa was a gift from Lotte. On October 24, 2012, after speaking to Mr. Martinez and being reminded about the pending RFP, Chairman Santos returned the bag with the purse to Mr. Mesa who, in turn, attempted to return the purse to Lotte for a refund.

DFS contends in Alleged Fact No. 3, in part, "Mr. Reyes has also informed us that the delegation members were told by GVB Chairman Mesa to 'choose whatever you want.'" GIAA's investigation confirms that Mr. Mesa stated something to the effect of "choose whatever you want." According to Mr. Mesa, he stated that the Delegates should "choose whatever you want", and by that he meant that the shopping cards were applicable to anything in the store purchased that day. To take advantage of the discount, a Delegate had to buy something. Ms. Bosco recalls that Mr. Mesa said something to the effect of "choose whatever you want and I'll pay for it," but she understood that he was joking.

The trip to the Lotte Hotel and Store lasted about 45 minutes to an hour. When Mr. Mesa returned to the hotel, he received a message that gift bags were being delivered by Lotte for the female members of the Delegation. Neither the gift bags nor the contents carry the Lotte logo. No gift bags were distributed to the male members of the Delegation. Later that evening at the Westin Chosun, Director Tolan encountered Mr. Mesa, who told her he had a gift bag for her, which he would have delivered to her room. Mr. Mesa did not inform Director Tolan that the gift bag was from Lotte. According to Director Tolan, she later found a gift bag of lotions and face creams in her hotel room, which she believed was given by Jeju Air. Apart from Director Tolan, Mr. Mesa had gift bags delivered to the First Lady, Senator Muna-Barnes, and Ms. Bosco. Ms. Bosco recalls that Mr. Reyes distributed the gift bags on the bus on the way to the Incheon airport for the return flight to Guam.

**3. Some of the Delegates May Have Visited a Lotte Store During Transit Through Incheon Airport on the Return From the Korea Trip**

DFS contends in Alleged Fact No. 4, in part, "On September 27, when the Delegation arrived at Incheon Airport to return to Guam, they were again met by Lotte staff who accompanied them as they checked in and then took them to the Lotte airport duty free store, where they were given gifts. It is also possible that merchandise they had picked out the day before at the Seoul store may have been delivered to them at the airport." GIAA's investigation supports the latter part of Alleged Fact No. 4, namely, that "merchandise they [the members of the delegation] had picked out the day before at the Seoul store may have been delivered to them at the airport." According to Mr. Mesa, he arranged with Lotte to have the items purchased from Coach delivered to the Incheon Airport in time for the Delegates' departure.

GIAA's investigation has not uncovered any evidence that Lotte staff took the Delegates to the Lotte airport duty free store, gave them a tour of the store or gave them gifts, and DFS has not