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KATHLEEN V. FISHER, ESQ.
WILLIAM N. HEBERT, ESQ.
MICHAEL A. PANGELINAN, ESQ.
SARAH L. FABIAN, ESQ.
CALVO FISHER & JACOB LLP
Attorneys at Law
259 Martyr Street, Suite 100
Hagatna, Guam 96910
Telephone No.: (671) 646-9355
Facsimile No.: (671) 646-9403

Attorneys for Agency
A.B. Won Pat International Airport Authority, Guam

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 9/19/14

TIME: 3:00 AM PM BY: JH

FILE NO OPA-PA: 13-006

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

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

APPEAL NO.: OPA-PA-13-006

Appellant.

**DECLARATION OF JANALYNN CRUZ
DAMIAN IN SUPPORT OF A.B. WON
PAT INTERNATIONAL AIRPORT
AUTHORITY, GUAM'S MOTION TO
DISQUALIFY PUBLIC AUDITOR**

**DECLARATION OF JANALYNN CRUZ DAMIAN IN SUPPORT OF A.B. WON PAT INTERNATIONAL
AIRPORT AUTHORITY, GUAM'S MOTION TO DISQUALIFY PUBLIC AUDITOR**

1 I, Janalynn Cruz Damian, declare:

2 1. I am an associate with Calvo Fisher & Jacob LLP (“CFJ”). I make this declaration
3 in support of GIAA’s motion to disqualify the Public Auditor. I have personal knowledge of the
4 matters set forth herein and could testify thereto under oath if called as a witness.

5 2. I regularly advise our client A.B. Won Pat International Airport Authority, Guam
6 (“GIAA” or “Airport”) concerning various business and regulatory matters. In 2012 and 2013, I
7 represented GIAA in connection with the request for proposal issued by GIAA for its specialty
8 retail concession.

9 3. On July 19, 2012, GIAA issued a request for proposal (an “RFP”) to operate the
10 specialty retail concession at the Airport. At the time of issuance of the RFP, one of DFS Guam
11 L.P.’s (“DFS”) three specialty retail concession contracts had already expired and DFS was
12 operating thereunder in a month-to-month holdover capacity. DFS’s main concession contract was
13 scheduled to expire on January 20, 2013. Four companies submitted proposals in response to the
14 RFP.

15 4. On October 30, 2012, DFS wrote a letter to GIAA expressing “concern” and
16 alleging that two members of GIAA’s board of directors who traveled to South Korea on a trip
17 sponsored by the Guam Visitors Bureau to celebrate the inaugural flight of a new direct connection
18 between Guam and Seoul received gifts from a corporate affiliate of Lotte Duty Free Guam, LLC
19 (“Lotte”), one of the proposers, during the trip. A true and correct copy of DFS’s October 30, 2012
20 letter is attached hereto as **Exhibit A**. DFS declined to submit a procurement protest at that time.
21 Nevertheless, GIAA investigated the allegations in DFS’s October 30, 2012 letter and found that
22 no misconduct occurred. The two directors who visited South Korea were not involved in and
23 abstained from any participation in the procurement process relating to the RFP.

24 5. The four proposals received by the Airport were reviewed and scored according to
25 criteria established by the RFP by an independent evaluation committee (comprising no members
26 of GIAA’s board of directors) in consultation with an outside aviation consulting firm, which
27 solely reviewed, quantified, and compared the financial components of each proposal and issued a
28 report to the evaluation committee. On March 28, 2013, prior to the GIAA Board’s regular

**DECLARATION OF JANALYNN CRUZ DAMIAN IN SUPPORT OF A.B. WON PAT INTERNATIONAL
AIRPORT AUTHORITY, GUAM’S MOTION TO DISQUALIFY PUBLIC AUDITOR**

1 meeting, GIAA's Supply Management Administrator, Franklin P. Taitano, and I met to assign
2 letter designations to the four proposers who had submitted proposals in response to the RFP. The
3 letter A, B, C, or D was assigned randomly by lottery to each proposer starting with the first
4 proposal received. This was done to protect the confidentiality of the proposers and to avoid public
5 disclosure of information prohibited from disclosure under the Procurement Regulations. A
6 memorandum was then prepared by the Supply Management Administrator memorializing the
7 letter designations given to each proposer and this memorandum was included in the procurement
8 record for the RFP.

9 6. Later that same day, the GIAA Board held its regular meeting. The ranked order of
10 proposers was presented to the Board, along with the recommendation of GIAA's Evaluation
11 Committee. When the evaluation results and ranking order were presented, the four proposers were
12 identified in the results and their ranking only by their letter designations. DFS representatives
13 attended this Board meeting.

14 7. After this presentation, some Board members asked questions regarding the method
15 and process used to evaluate the proposals and the fact that the proposers were identified only by
16 letter designations. The GIAA Board tabled the matter pending further clarification from GIAA
17 legal counsel regarding the propriety of using letter designations in connection with the Board
18 approval process.

19 8. On April 11, 2013, DFS sent another letter to GIAA expressing its view that GIAA
20 and its legal counsel had not done enough to address DFS's concerns expressed in its earlier
21 October 30, 2012 letter, but also insisting that "the process of the RFP must continue to move
22 forward." A true and correct copy of DFS's April 11, 2013 is attached hereto as **Exhibit B**.

23 9. On April 12, 2013, the Board met again and, after using the same letter-designations
24 for the proposals, discussed the evaluation criteria and rankings. Following a board vote approving
25 the independent evaluation committee's rankings, GIAA announced that Lotte had submitted the
26 highest ranked proposal. After the announcement that Lotte had submitted the most qualified
27 proposal, I was personally involved in the contract negotiations between Lotte and GIAA.
28

EXHIBIT A



For: Mr. Ada & Mr. Taltano

Fax number: 671-646-8823

From: Mr. Jim Beighley

Fax number:

Date: November 7, 2012

Regarding: Letter of Concern

Number of pages: 3 (including cover)

Comments:

Hafa Adai Gentlemen. As the GIAA single point of contact for the current retail concessions RFP, I am transmitting this letter to you. Please acknowledge receipt of same.

With very best regards,

Jim Beighley



A.B. WON PAT
INTERNATIONAL AIRPORT AUTHORITY, GUAM

NOV 07 2012

TIME: 9:42 AM

REC'D BY: *[Signature]*

October 30, 2012

Mr. Charles H. Ada II
Executive Manager
A.B. Won Pat International Airport Authority
Administration Office, 3rd Floor
355 Chalan Pasajeru
Tamuning, Guam 96931

Re: GIA RFP 010-FY12

Dear Mr. Ada:

I am writing to you to raise concerns that DFS has over some recent activities which have come to our attention surrounding the GIA RFP 010-FY12 which we feel may have been in contravention the procedures stipulated under the RFP as well as violative of the spirit of the Guam procurement laws.

Mr. Ada, we raise this letter of concern to you with the expectation that you will investigate this matter fully and take the appropriate action warranted by the outcome of your investigation. It is unfortunate that one of the bidding entities has chosen to act in such a blatantly questionable manner as it casts a shadow over what otherwise has been, in our opinion, a very well coordinated and well managed bid process. GIAA staff and management should be commended for the professional and thorough manner in which they have handled the bid process thus far – as both the incumbent operator and bidder we are proud to be associated with GIAA, and we are confident that you will handle this situation appropriately.

Specifically, we have learned that:

- On September 26th a delegation from Guam organized by GVB sponsored a trip to Korea to celebrate the inaugural Jeju Air flight to Guam. Two GIAA Board Directors were participants in that delegation.
- We understand that the delegation met with high-ranking officials of the Lotte Group who we understand to be a proposer for the GIAA retail bid.
- In addition to touring the Lotte off-Airport Duty Free and Department stores, the Board Directors also extensively toured the Lotte Airport store prior to their departure from Korea.
- Gifts were given from Lotte to the GIAA Board Members.

DFS Guam L.P.
1296 Pale San Vitores Road
Tamon, Guam 96913

These discoveries concern us because they may be in contravention of the following requirements or regulations:

- Potentially a violation of the "single point of contact" requirement of Part II.C of the RFP which states that "from the date the RFP is issued until final award, Proposers shall not communicate with any GIAA staff, Board Members or officials regarding this RFP..."
- Assuming Lotte is a proposer for this RFP, as we understand, they would have been required to affirm when they submitted their bid on October 17th that they have not purposely or knowingly tried to directly influence any government officials directly connected with GIA who may have involvement or influence in the RFP process or outcome. Giving a guided tour of the Duty Free facilities downtown and especially those at the airport would almost certainly be done in an effort to showcase their operations and positively influence the GIA Board Members in their opinion of Lotte's operations. The giving of gifts could be perceived to be done with the same intention in mind. The opportunity to showcase the bidders retail operations was not afforded to other bidding entities who are based in Korea, nor was it afforded to DFS or any other bidding entities based outside of Guam – it was specifically organized for the benefit of one single bidder.
- Depending on the nature and the value of the gifts, any Board Members that may have accepted such a gift or other gratuity potentially open themselves up to scrutiny under the standards of ethical conduct prescribed in Guam's procurement law.

We submit this letter of concern in the spirit of transparency and professional conduct which has governed our mutual relationship throughout the years. We must also, as I'm sure you can appreciate, protect our interests and legal options throughout all stages of this process so as to guard against any undue and potentially illegal influence that other parties may choose to engage in. Any actions that are not in complete respect of the regulations of the RFP and the laws of Guam would be to the detriment of our enterprise, the employees and families of DFS, the GIAA and the tourism industry on Guam of which we are a part and which the Guam International Airport serves as the bedrock of the foundation upon which the island's most important industry is built.

Should you have any additional questions, please don't hesitate to contact me and should I learn any additional information which may be related to this matter, I will continue to update you in due course.

Very truly yours,


Lamonte J. Beighley (Jim)
Managing Director
DFS Mid-Pacific Division

EXHIBIT B



RECEIVED 11 APR 2013 11:57 A.M.

DFS Guam LP P O Box 7746
Tamuning, Guam 96931
Telephone 671.647.3800
Facsimile 671.647.3902

LETTER OF TRANSMITTAL

DATE: April 11, 2013

TO: Mr. Franklin P. Taitano

FROM: Mr. Jim Beighley

DFS Guam LP

1296 Pale San Vitores Road

Tumon, Guam 96913

ATTENTION: _____

SUBJECT: _____

CC: _____

WE ARE SENDING YOU Attached
 Shop Drawings Prints Samples
 Copy of Letter Change Order

Under Separate Cover Via _____ the following items:
 Specifications
 Other: _____

COPIES	DATE	NO.	DESCRIPTION
1	4/11/2013		Letter RE: GIAA010-FY12

THESE ARE TRANSMITTED as indicated below:

For Approval Approved as submitted Resubmit _____ Copies for approval For Bids Due _____
 For Your Use Approved as noted Submit _____ Copies of distribution Returning Drawings, Etc. with Bid _____
 As Requested Returned for corrections Return _____ Corrected prints From Subcontractor/Supplier _____
 For Review and Comment Other _____

COMMENTS:

DATE: _____

RE-TRANSMIT TO: _____

ATTENTION: _____

ACTION: _____

Transmitted By:
Alicia Roberto

Received By: _____

Signature: _____

Date: _____




April 11, 2013

Mr. Franklin P. Taitano
A.B. International Airport Authority, Guam
355 Chalan Pasajeru, Route 10A
Tamuning, Guam 96913

RE: RFP GLAA010-FY12

Dear Mr. Taitano,
Please find attached the following letter for processing and distribution accordingly:

With my sincerest respect and regards,


Jim Beighley
Managing Director
DFS Guam



April 11, 2013

To the Attention of:

Lucy Alcorn
Martin Gerber
Jess Torres
Edward Untalan
c/o A.B. International Airport Authority, Guam
355 Chalan Pasajeru, Route 10A
Tamuning, Guam 96913

Re: RFP No. GIAA010-FY12 Specialty Retail Concession Multi Concepts.

I am writing to express our continuing concerns relative to the above referenced RFP currently in process. At the recent GIAA board meeting, two GIAA directors, including the board chairman, felt obliged to disqualify themselves from participating in the process because of concerns over appearances of impropriety resulting from the fact they received gifts during the GVB sponsored trip to Korea in September. Per a subsequent media report, local legal counsel for Lotte, reacting to the directors' actions, admitted that it was his client that had provided the gifts, but minimized their value, downplayed their significance and denied that Lotte was aware that GIAA board members were part of the GVB delegation.

I first raised concerns over these matters in my letter to the Executive Manager dated October 30, a copy of which is attached. It was our assumption that an investigation would have been undertaken by GIAA or its legal counsel as we suggested. We believe such an investigation would have established that the actions of Lotte were not as unknowing and innocent as it and its legal counsel would want the GIAA and the public to believe. The meetings in Korea involved both GIAA and GVB staff and management and were coordinated by GVB staff. These staff personnel would have direct knowledge of what transpired. We understand, however, that none of the involved GVB staff were interviewed or otherwise questioned.

We understand the true facts may have been that:

Senior Lotte management were fully aware of the fact that GIAA directors were part of the GVB delegation

DFS Guam L.P.
P. O. Box 7746
Tamuning, Guam 96931



Senior Lotte management participated in the meetings—including tours of Lotte facilities

Members of the GVB delegation were encouraged to select merchandise at the Lotte store which they later received as gifts free of charge

The GIAA directors who were members of the delegation may have picked out their own gifts

The value of the gifts was not at all nominal, as has been stated

Earlier press reports also suggested that GVB staff had expressed concerns early on concerning the propriety of the meetings between Lotte officials and delegation members including the GIAA directors, but those concerns were overridden by members of GVB management, who themselves may have some connections to Lotte.

Instead of focusing on the questionable actions of one of the proponents, the GIAA's legal counsel and GIAA management have done what they can to "sanitize" the RFP process and remove the taint caused by Lotte's actions. The involved GIAA directors have returned the gifts and recused themselves. As a result, the burden of making one of the most important decisions the board must make, which decision will affect GIAA for decades, has fallen on a minority of the board—per Robert's Rules of Order.

We believe the focus more properly should have been on the actions of Lotte, not on those of the directors. As a result, a cloud still hangs over this RFP process. The RFP required each of the proponents to submit affidavits regarding the giving of gifts and gratuities and knowingly attempting to influence government employees to commit ethical breaches. These affidavits go to the heart of the integrity of the procurement process. Arranging for meetings with GIAA officials, giving tours of their stores and providing valuable gifts to those officials, all on the eve of vying for a valuable concession opportunity that will be awarded by those same officials, would, if true, raise, serious questions as to the accuracy of the statements Lotte was required to make.

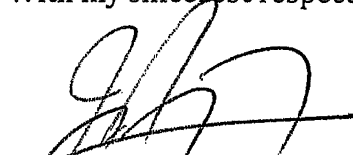
We believe that it is of the utmost importance for the Board of Directors of GIAA to insist that a very thorough investigation is conducted as to what exactly transpired during that GVB Korea trip. The nature and value of the gifts, the circumstances under which they were given and how they were selected by various members of the delegation are important elements to consider. It is also important to ascertain what knowledge Lotte actually had of the delegation members, when they had that knowledge, and how they chose to act subsequently.

DFS Guam L.P.
P. O. Box 7746
Tamuning, Guam 96931



As a former Vice Chairman and Director of GVB, another semi-autonomous agency in Guam, I appreciate fully the responsibility that the directors of GIAA. The responsibility for the fiscal, legal, and operational health of the agency as well as the local and international perception of the governance of the agency is one that is not taken lightly. We believe that the process of the RFP must continue to move forward. There are several important steps ahead that must be followed. As the process moves forward, however, the directors who are ultimately responsible for the outcome must ensure that this investigation into what transpired is, and has been, conducted thoroughly and that as a body the board is informed of all of the relevant facts, particularly in light of the statements which have just been made during and subsequent to the last board meeting.

With my sincerest respect and regards,



Jim Beighley
Managing Director
DFS Guam

Attachment: Letter dated October 30, 2012 Attention: Charles H. Ada II



October 30, 2012

Mr. Charles H. Ada II
Executive Manager
A.B. Won Pat International Airport Authority
Administration Office, 3rd Floor
355 Chalan Pasajeru
Tamuning, Guam 96931

Re: **GIA RFP 010-FY12**

Dear Mr. Ada:

I am writing to you to raise concerns that DFS has over some recent activities which have come to our attention surrounding the GIA RFP 010-FY12 which we feel may have been in contravention the procedures stipulated under the RFP as well as violative of the spirit of the Guam procurement laws.

Mr. Ada, we raise this letter of concern to you with the expectation that you will investigate this matter fully and take the appropriate action warranted by the outcome of your investigation. It is unfortunate that one of the bidding entities has chosen to act in such a blatantly questionable manner as it casts a shadow over what otherwise has been, in our opinion, a very well coordinated and well managed bid process. GIAA staff and management should be commended for the professional and thorough manner in which they have handled the bid process thus far – as both the incumbent operator and bidder we are proud to be associated with GIAA, and we are confident that you will handle this situation appropriately.

Specifically, we have learned that:

- On September 26th a delegation from Guam organized by GVB sponsored a trip to Korea to celebrate the inaugural Jeju Air flight to Guam. Two GIAA Board Directors were participants in that delegation.
- We understand that the delegation met with high-ranking officials of the Lotte Group who we understand to be a proposer for the GIAA retail bid.
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- Gifts were given from Lotte to the GIAA Board Members.

DFS Guam L.P.
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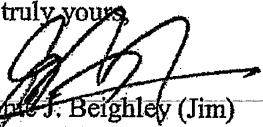
These discoveries concern us because they may be in contravention of the following requirements or regulations:

- Potentially a violation of the "single point of contact" requirement of Part ILC of the RFP which states that "from the date the RFP is issued until final award, Proposers shall not communicate with any GIAA staff, Board Members or officials regarding this RFP..."
- Assuming Lotte is a proposer for this RFP, as we understand, they would have been required to affirm when they submitted their bid on October 17th that they have not purposely or knowingly tried to directly influence any government officials directly connected with GIA who may have involvement or influence in the RFP process or outcome. Giving a guided tour of the Duty Free facilities downtown and especially those at the airport would almost certainly be done in an effort to showcase their operations and positively influence the GIA Board Members in their opinion of Lotte's operations. The giving of gifts could be perceived to be done with the same intention in mind. The opportunity to showcase the bidders retail operations was not afforded to other bidding entities who are based in Korea, nor was it afforded to DFS or any other bidding entities based outside of Guam – it was specifically organized for the benefit of one single bidder.
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We submit this letter of concern in the spirit of transparency and professional conduct which has governed our mutual relationship throughout the years. We must also, as I'm sure you can appreciate, protect our interests and legal options throughout all stages of this process so as to guard against any undue and potentially illegal influence that other parties may choose to engage in. Any actions that are not in complete respect of the regulations of the RFP and the laws of Guam would be to the detriment of our enterprise, the employees and families of DFS, the GIAA and the tourism industry on Guam of which we are a part and which the Guam International Airport serves as the bedrock of the foundation upon which the island's most important industry is built.

Should you have any additional questions, please don't hesitate to contact me and should I learn any additional information which may be related to this matter, I will continue to update you in due course.

Very truly yours,



Lamonte J. Beighley (Jim)
Managing Director
DFS Mid-Pacific Division