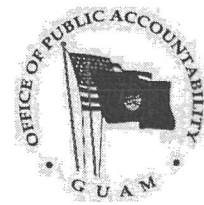


Suite 401 DNA Building  
 238 Archbishop Flores St.  
 Hagåtña, Guam 96910



# FAX

<b>To:</b>	<b>Ms. Claudia S. Acfalle</b> <b>Chief Procurement Officer</b> General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915  Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	<b>From:</b>	<b>Doris Flores Brooks</b> <b>Guam Public Auditor</b> Office of Public Accountability
		<b>Pages:</b>	10 (including cover page)
<b>CC:</b>	<b>Elyze Iriarte, Esq.</b> Iriarte Camacho Calvo Law Group LLC 334 W Soledad Ave., Suite 401 Hagatna, Guam 96910  Phone: (671) 472-6813 Fax: (671) 477-4375	<b>Date:</b>	June 28, 2016
		<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 208 (671) 472-7951

**Re:** OPA-PA-16-008 Notice of Receipt of Appeal

Urgent   
  For Review   
  Please Comment   
  Please Reply   
  Please Recycle

**Comments:**

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,  
 Jerrick Hernandez  
 Auditor  
[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)

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



OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

June 28, 2016

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

**VIA FACSIMILE: (671) 475-1727**

Re: Notice of Receipt of Appeal – OPA-PA-16-008

Dear Ms. Acfalle,

Please be advised that Basil Food Industrial Services Corporation (Basil Food) filed an appeal with the Office of Public Accountability (OPA) on June 28, 2016 regarding the General Services Agency's (GSA) response to Basil Food's protest relative to Requisition Number Q161730066/RFQ16002366, Emergency Procurement for Nutrition Services for the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program ("ENP"), Home Delivered Meals Component and Congregate Meals Component. OPA has assigned this appeal case number OPA-PA-16-008.

Immediate action is required of GSA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at [www.opaguam.org](http://www.opaguam.org). The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.


Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Wednesday, July 6, 2016**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement

solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Wednesday, July 13, 2016**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to Basil Food. In addition, OPA respectfully asks that GSA provide one original and two copies of the procurement record and agency report as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208, or [jhernandez@guamopa.com](mailto:jhernandez@guamopa.com), should you have any questions regarding this notice.

Sincerely,

  
for Rodalyn Gerardo  
Audit Supervisor

Enclosure: First seven pages of Notice of Appeal – OPA-PA-16-008

Cc: Elyze Iriarte, Attorney for Basil Food

IRIARTE CAMACHO CALVO LAW GROUP LLC

ELYZE M. IRIARTE  
eiriarte@icclawgroup.com  
134 W Soledad Ave., Suite 401  
Hagåtña, GU 96910  
Tel No. 671.472.6813  
Fax No. 671.477-4375

Attorneys for Appellant  
BASIL FOOD INDUSTRIAL SERVICES CORPORATION

**RECEIVED**

OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: June 28, 2016

TIME: 10:33  AM  PM BY: AQ

FILE NO OPA-PA: 16-008

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

BASIL FOOD INDUSTRIAL SERVICES  
CORPORATION,

Appellant.

Docket No. OPA-PA\_\_\_\_\_

**NOTICE OF PROCUREMENT APPEAL**

Basil Food Industrial Services Corporation brings this appeal of protest denial issued by General Services Agency of the Department of Administration.

**Appellant Information:**

Name: Basil Food Industrial Services Corporation (formerly known as Li Qun Corporation).

Mailing Address: 530 West O'Brien Drive, Hagåtña, GU 96910. For the purposes of this Appeal, please direct filings and correspondence to Basil's legal counsel: Iriarte Camacho Calvo Law Group LLC, Attn: Elyze Iriarte, Esq., 134 W Soledad Ave Ste 401, Hagåtña, GU 96910.

Business Address: 530 West O'Brien Drive, Hagåtña, GU 9691

Email Address: eiriarte@icclawgroup.com

Daytime Contact No.: 472-6813

Fax No.: 477-4375

### **Appeal Information**

Purchasing Agency: General Services Agency for the Department of Public Health and Social Services (DPHSS)

Identification of Contract: Requisition Number Q161730066 / RFQ16002366.

Decision being appealed was made on June 22, 2016 by the Acting Chief Procurement Officer, Anita Cruz. See Ex. B.

Appeal is made from a Decision denying Basil's Protest of Emergency Procurement of Nutrition Services for the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program ("ENP"), Home Delivered Meals Component and Congregate Meals Component.

Names of Competing Bidders, Offerors, or Contractors known to Appellant: SH Enterprises.

### **Statement Supporting the Appeal**

The Office of Public Accountability has jurisdiction over procurement disputes, including the present dispute. 5 GCA §§ 5427, 5706.

This case concerns the emergency procurement issued after GSA illegally terminated GSA Bid Nos. 010-14 and 011-14, which Basil had been servicing. Rather than allow Basil to cure its default, which Basil did within two days, GSA has chosen to pay exponentially higher rates out of a sole source procurement masqueraded as an emergency procurement.

Basil submitted its protest on June 14, 2016, which it supplemented on June

17, 2016. Ex. A. GSA issued its denial of the protest on June 22, 2106. Ex. B.

A. GSA Did Not Abide By Guam Law In Issuing the Emergency Procurement.

Section 5215 of Title 5 explains what must occur prior to an emergency procurement being issued and awarded. GSA "must solicit at least three (3) informal price quotations, if time allows give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the preceding twelve (12) months, and must award the procurement to the firm with the best offer, as determined by evaluating cost and delivery time." 5 GCA § 5215.

Applying the plain language of section 5215, GSA was required to: (1) obtain three quotations; (2) if time allowed, give notice to contractors from the qualified bid list who provided the needed supplies and services within the past year; then (3) award to the best offer.

GSA did not follow this process. It sought out only one quotation, not three as the law directs. GSA did so by misconstruing section 5215. According to GSA's letter denying Basil's protest, GSA claims that the relevant language of section 5215 states "GSA must solicit at least three (3) informal price quotations, if time allows must give ...". Ex. B. That's the full excerpt which GSA claims allows it to forego obtaining three price quotations. Also, that is the only provision of section 5215 that GSA contends is relevant when issuing an emergency procurement.

Of course, that is not an acceptable method of statutory interpretation or application. In expounding on a statute, one must look at the entire law. When viewed plainly, section 5215 has three sections, all separated by commas. First, GSA must solicit at least three informal price quotations. The second section is contained

in between surrounding commas: "if time allows give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the preceding twelve (12) months." Finally, the third section states that the government "must award the procurement to the firm with the best offer, as determined by cost and delivery time." The phrase "if time allows" does not qualify the phrase that GSA must solicit at least three quotations; instead, it qualifies the phrase about giving notice to contractors from the qualified bid list. As GSA procured only one quote, it did not abide by Guam law.

Furthermore, it in essence issued an improper sole source procurement, as there is more than one vendor that could service the ENP program. GSA willingly ignored Guam law.

#### B. GSA Did Not Contact Basil

Guam law states that "if time allows [the government must] give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the preceding twelve months." 5 GCA § 5215. Basil was the ongoing provider for supplies and services under the ENP program and should have been allowed an opportunity to provide a price quotation. Basil could have located an alternative facility to provide the services, and would have done so at a much lower rate than what the Government is paying to SH.

Furthermore, in its response to the protest, GSA claims that it could not contact other vendors who did not meet the requirements under the law. It is not certain what GSA means by that. In 2015, GSA issued an emergency procurement for ENP services. The Government issued requests for quotations to at least three

vendors. It is not only legally mandated, but possible, for the Government to follow Guam law in this circumstance.

C. The Emergency Procurement Does Not Require the Vendor to Have a HACCP Plan and SH Does Not Have A HACCP Plan.

In 2013, Guam passed a new Food Code, which requires a Hazard Analysis and Critical Control Point ("HACCP") Plan under certain circumstances, including for vendors providing elderly nutrition services. In the summer of 2015, while allowing many other vendors of food services to highly susceptible populations to delay submission of a HACCP Plan, the Government closed down Basil's operations for its failure to have a HACCP Plan. The Government then issued an emergency procurement award to SH. The Government admitted, however, that no other entity had submitted a HACCP Plan, meaning that SH was allowed to serve a highly susceptible population **without** a HACCP Plan, the same reason the Government shut down Basil.

The present emergency procurement also does not require SH to have a HACCP Plan. Nor does SH have one. In preparation for this appeal, Basil submitted to DPHSS a Freedom of Information Act Request seeking copies of all HACCP Plans on file with DPHSS. Again, the Government produced no evidence that SH holds a HACCP Plan. That is despite the fact that the Government informed SH to produce a plan back on July 24, 2015. Ex. C. Therefore, SH should not be allowed to prepare food for recipients of the ENP program, and the Government should not be paying a non-compliant vendor for such services.

D. SH Is Not Qualified

In GSA's response to the protest, GSA stated that SH met the test of being a



qualified bidder in the past year. This is untrue. As Basil learned on June 24, 2016, when reviewing documents produced by DPHSS in response to a FOIA request, when SH provided emergency ENP services in July 2015, it was inspected and received so many demerits that it technically received a "D" rating. For some unknown reason, even though SH operated a D-rated establishment, the Government did not shut down SH's operations. It continued to allow SH to cook and deliver food to the manâmkok'. SH should not have been considered a qualified bidder providing the same or similar services in the past year.

Basil also notes that DPHSS has conducted further inspections of SH since it began providing emergency services in June 2016. Those inspections were related to Basil's complaints that SH was delivering food in open trucks, in violation of the Guam Food Code, and not sealing the food. Once again, however, DPHSS has refused to assign SH a grade, and DPHSS and GSA took no action against SH.

Lastly, Basil notes that SH has not complied with the procurement's requirement to submit an emergency plan. The Government has not furnished evidence of SH's emergency plan.

#### E. GSA Sought an Emergency Procurement For Beyond 30 Days

An emergency procurement should last for not more than 30 days. 2 GAR Div. 4 § 3113. GSA's May 31, 2016 Memo to the Governor seeking approval for the emergency procurement stated that the emergency period would last for 90 days, Ex. D, which is in direct violation of Guam's procurement law and regulations.

### **Relief Requested**

Basil requests that the emergency procurement and the contract awarded to

SH be immediately terminated.

Because this matter pertains to an emergency procurement, Basil requests for **expedited review of this appeal**.

Basil asks for recovery of its attorney's fees and costs in connection with this matter.

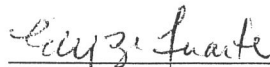
**Declaration re Court Action**

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

DATED: Hagåtña, GU, 28, June, 2016.

IRIARTE CAMACHO CALVO LAW  
GROUP LLC



ELYZE MCDONALD IRIARTE

Attorneys for Appellant  
BASIL FOOD INDUSTRIAL SERVICES  
CORPORATION

## TRANSACTION REPORT

JUN/28/2016/TUE 02:01 PM

## BROADCAST

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	JUN/28	01:51PM	4751727	0:03:29	10	MEMORY OK	G3 7419
002		01:52PM	4724217			MEMORY BUSY	7419
003		01:53PM	4774375	0:03:25	10	MEMORY OK	G3 7419
TOTAL				0:06:54	20		

TRANSMISSION ERROR OCCURRED AT SOME RECEIVERS.  
PLEASE GIVE THIS TRANSACTION REPORT TO SENDER.

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



## FAX

<b>To:</b>	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915	<b>From:</b>	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
	Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	<b>Pages:</b>	10 (including cover page)
<b>CC:</b>	Elyze Iriarte, Esq. Iriarte Camacho Calvo Law Group LLC 334 W Soledad Ave., Suite 401 Hagatna, Guam 96910	<b>Date:</b>	June 28, 2016
	Phone: (671) 472-6813 Fax: (671) 477-4375	<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 208 (671) 472-7951

**Re:** OPA-PA-16-008 Notice of Receipt of Appeal

Urgent     For Review     Please Comment     Please Reply     Please Recycle

**Comments:**

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,  
Jerrick Hernandez  
Auditor  
[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)

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

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

GOV'T OF GUAM  
G.S.A.

2016 JUN 28 PM 2:16

RECEIVED



**FAX**

<b>To:</b>	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915	<b>From:</b>	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
	Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	<b>Pages:</b>	10 (including cover page)
<b>CC:</b>	Elyze Iriarte, Esq. Iriarte Camacho Calvo Law Group LLC 334 W Soledad Ave., Suite 401 Hagatna, Guam 96910	<b>Date:</b>	June 28, 2016
	Phone: (671) 472-6813 Fax: (671) 477-4375	<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 208 (671) 472-7951

**Re:** OPA-PA-16-008 Notice of Receipt of Appeal

Urgent     For Review     Please Comment     Please Reply     Please Recycle

**Comments:**

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,

Jerrick Hernandez

Auditor

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

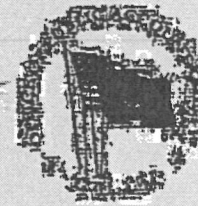
This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

*FAX*  
**RECEIVED**

**IRIARTE, CAMACHO, CALVO LAW GROUP LLC**

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

**DATE:** 06/28/16 **TIME:** 1:28p



**FAX**

<b>To:</b>	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915	<b>From:</b>	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
	Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	<b>Pages:</b>	10 (including cover page)
<b>CC:</b>	Elyze Iriarte, Esq. Iriarte Camacho Calvo Law Group LLC 334 W Soledad Ave., Suite 401 Hagatna, Guam 96910	<b>Date:</b>	June 28, 2016
	Phone: (671) 472-6813 Fax: (671) 477-4375	<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 208 (671) 472-7951

**Re:** OPA-PA-16-008 Notice of Receipt of Appeal

- Urgent   
  For Review   
  Please Comment   
  Please Reply   
  Please Recycle

**Comments:**

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,  
Jerrick Hernandez  
Auditor  
[jhermandez@guamopa.com](mailto:jhermandez@guamopa.com)

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