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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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FILE NO OPA-PA: 16-006, 16-008

**IN THE OFFICE
OF PUBLIC ACCOUNTABILITY**

In the Appeal of

BASIL FOOD INDUSTRIAL SERVICES
CORPORATION,

Appellant.

**DOCKET NO. OPA-PA-16-006
OPA-PA-16-008**

**INTERESTED PARTY
SH ENTERPRISES, INC.'S
REMEDIES BRIEF**

SH Enterprises, Inc. ("SH Enterprises") respectfully submits its Remedies Brief in this action.

Neither SH Enterprises nor the General Services Agency ("GSA") violated Guam Procurement Law in relation to the termination of Basil Food Industrial Services Corporation ("Basil") from its Contracts in GSA Bid No. 010-14 and GSA Bid No. 011-14, and the award of an emergency contract to SH Enterprises to perform the same services. The Public Auditor should deny Basil's appeals. Further, the Public Auditor should award SH Enterprises reasonable attorney's fees and costs incurred in this appeal.

Remedies post award are governed by 5 G.C.A. §5452. Section 5452 provides as follows:

§ 5452. Remedies After an Award.

(a) If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

(1) if the person awarded the contract has not acted fraudulently or in bad faith:

(A) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Territory; or

(B) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.

(2) if the person awarded the contract has acted fraudulently or in bad faith:

(A) the contract may be declared null and void; or

(B) the contract may be ratified and affirmed if such action is in the best interests of the Territory, without prejudice to the Territory's rights to such damages as may be appropriate.

(b) This Section shall be read as being in addition to and not in conflict with, or repealing 4 GCA § 4137 (Prohibitions on the Activities of Government Employees).

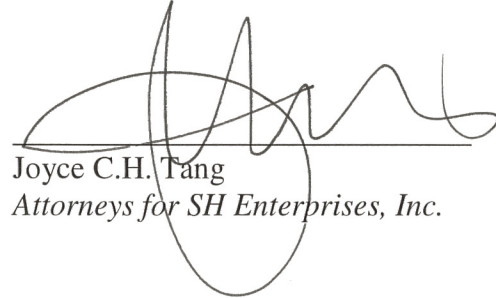
See 5 G.C.A. §5452. SH Enterprises, the recipient of the emergency procurement, did not act fraudulently or in bad faith. If the Public Auditor finds that there were procurement law violations on the part of GSA, then Public Auditor has two options before her: (1) ratify and affirm the emergency contract, or (2) terminate the contract and require that SH Enterprises be “compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.” *Id.*

As was demonstrated at the hearing, the Elderly Nutrition Program meals served are vital to the continued health, safety and well being of 1150 homebound manamkos and 650 manamkos who receive these meals at the mayor's offices. Thus, it is in the best interest of the Territory of Guam and our Manamkos, to ratify and affirm the short term emergency contract

between GSA and SH Enterprises. It was demonstrated during the Hearing on this matter that while Basil held the ENP contracts, it failed to fulfill its obligations by preparing safe and nutritious meals to the seniors in a kitchen continuously meeting the minimum A-B rating standards. It is in the best interest of the manamkos, and thus the Territory, to allow SH Enterprises to continue with the emergency contract until GSA is able to issue a new RFP.

Respectfully submitted this 26th day of August, 2016.

CIVILLE & TANG PLLC



Joyce C.H. Tang
Attorneys for SH Enterprises, Inc.