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 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

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

IN THE APPEAL OF:)	DOCKET NO. OPA-PA 16-006
)	
)	
BASIL FOOD INDUSTRIAL SERVICES)	
CORPORATION,)	MOTION FOR RECONSIDERATION
)	
Appellant.)	
)	

Now comes the General Services Agency (GSA), represented by the Office of the Attorney General, and hereby requests the Public Auditor to reconsider part of its Decision dated October 27, 2016.

Under the Conclusions section of the Decision, at number 8, the Public Auditor found that Basil Food Industrial Services Co. (Basil) was entitled to its reasonable costs incurred in connection with its protest of the emergency procurement, excluding attorney's fees, because there was a reasonable likelihood that Basil may have been awarded the emergency procurement but for GSA's violations of 2 G.A.R., Div. 4, Chap. 3, §3113.

The GSA requests reconsideration of this conclusion for several reasons. First, Basil had declared its appeal in OPA-PA-16-008 moot in a filing on September 7, 2016. Second, Basil was not eligible for the emergency procurement, as its facility was officially closed, and would not have been able to provide the services necessary. And last, awarding costs to Basil for an emergency which it itself created is a violation of the unclean hands doctrine.

In its September 7, 2016 filing, Basil notified the Public Auditor that its primary request for relief in OPA-PA-16-008 had been addressed by GSA, and that its appeal was moot. A matter which is moot is beyond the reach of the law. There are no extraneous factors that would warrant review despite Basil's declaration, pursuant to the U.S. Supreme Court's analysis in *DeFunis v. Odegaard*, 416 U.S. 312 (1974). The Public Auditor need not have analyzed any part of OPA-PA-16-008 in its Decision, and awarding remedies on legally moot actions is outside the powers of the office of the Public Auditor.


GSA entered into the emergency procurement on May 31, 2016, the day that Basil's facility was closed due to its failing rating from the Department of Environmental Health, for services that needed to begin on June 1, 2016. Basil's kitchen did not re-open prior to the issuance of the emergency procurement, and was not eligible to participate in bidding as it did not possess the capability of generating approximately 1,800 meals within the twelve hour period between the emergency being declared and the meals being delivered. Regardless of the Public Auditor's unconcern about the difficulty presented by the turnaround time, need for familiarity with the necessary nutritional provisions, and coordination with adequate transportation, it is wholly inaccurate to conclude that Basil had a reasonable likelihood of being awarded the emergency procurement when they had no means of providing the services.

Under the doctrine of unclean hands, “a plaintiff [must] act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim.” Kendall-Jackson Winery, Ltd. v. Superior Court (1999) 76 Cal.App.4th 970 at 978. This is the rare matter where a plaintiff has had unclean hands, both literally and figuratively. And as the record and health inspections have shown, clean hands is but one area where there has been massive failure by Basil. There would be no emergency procurement but for Basil breaching the contract with GSA, failing to maintain adequate sanitary conditions and receiving multiple bad grades in its health inspections. To reward Basil for its failures, to declare that the very party that caused the emergency had a reasonable likelihood of profiting from it, is unconscionable, and must be reversed.

Respectfully submitted this 10th day of November, 2016.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General

By:



NICOLAS TOFT
Assistant Attorney General