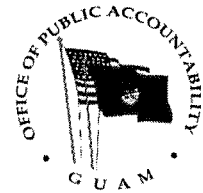


Suite 401 DNA Building
 238 Archbishop Flores St.
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FAX

To:	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	From:	Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
	Matthew E. Wolff, Esq. Assistant Attorney General Office of the Attorney General of Guam 590 S. Marine Corps Drive, Suite 706 Tamuning, Guam, 96913 Fax: (671) 472-2493	Pages:	5 (including cover page)
CC:	Geri E. Diaz, Esq. (Attorney for Appellant Basil Food) Camacho Calvo Law Group LLC 134 W Soledad Ave., Suite 401 Hagatna, Guam 96910 Phone: (671) 472-6813 Fax: (671) 477-4375	Date:	June 11, 2019
		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951

Re: OPA-PA-19-002 Decision

For Review

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com

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**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

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In the Appeal of)
Basil Food Industrial Services,)
Appellant.)

Appeal No: OPA-PA-19-002
DECISION AND ORDER RE
PURCHASING AGENCY'S
MOTION TO DISMISS AN APPEAL

To: **Purchasing Agency:**
General Services Agency
C/O Matthew E. Wolff, Esq.
Assistant Attorney General
Office of the Attorney General of Guam
590 S. Marine Corps Drive, Suite 706
Tamuning, Guam, 96913
Facsimile: (671) 472-2493

Appellant:
Basil Food Industrial Services
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Camacho Calvo Law Group LLC
134 W Soledad Ave., Suite 401
Hagatna, Guam 96910
Phone: (671) 472-6813
Fax: (671) 477-4375

THIS MATTER came before the Public Auditor on April 10, 2019, for a hearing on Purchasing Agency GENERAL SERVICES AGENCY's (Hereafter Referred to as "GSA") Motion to Dismiss filed in this matter on March 15, 2019. Appellant BASIL FOOD INDUSTRIAL SERVICES (Hereafter Referred to as "BASIL") was represented by its Counsel of Record, Geri E. Diaz, Esq. Robert Kono appeared on behalf of GSA and was represented by GSA's Counsel of Record, Matthew E. Wolff, Esq.

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BACKGROUND

In October 2018, GSA issued an emergency procurement for food services for inmates and detainees at the Department of Corrections (“DOC”) for a period of up to ninety (90) days, in thirty (30) day periods utilizing a September 25, 2018 Request for Quotations (“RFQ”) that had a section indicating prices would be good for one hundred eighty (180) days. GSA awarded the emergency procurement to California Mart.

On December 29, 2018, BASIL wrote to GSA asking the status of the new Invitation for Bid (“IFB”). On January 3, 2019, GSA responded to BASIL’s December 29, 2018 memorandum indicating they are awaiting approval on the bid from DOC and the Office of the Attorney General, which they hoped would be done soon. There was no indication that GSA would be requesting an Emergency Procurement declaration for a new 90-day period beginning January 2019. BASIL only became aware of this after submitting several Freedom of Information Act (FOIA) requests.

According to GSA’s Motion to Dismiss and Rebuttal to Comments on the Agency Report, GSA asked the Governor in December 2018 for another three (3) month emergency procurement because DOC had not finalized its long-term services IFB. The Governor granted another three (3) month emergency procurement.

GSA did not issue another RFQ for the new three (3) month emergency procurement beginning January 2019, but instead used the quotes from the September 2018 RFQ, as they considered it still valid because the prices were good for a period of one hundred eighty (180) days.

DISCUSSION

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BASIL is protesting that a contract was awarded to the same vendor without going through the procurement process. They argue that it was expected GSA would issue a new RFQ for the

1 January 2019 emergency procurement, which they became aware that GSA did not do after
2 submitting FOIA requests in January 2019.

3
4 GSA alleged that the Office of Public Accountability (“OPA”) has no jurisdiction over this
5 appeal because it was untimely and based on an insufficient, improper protest. Further, if the merits
6 were reached, BASIL has not alleged any facts that, when the law is applied, amount to wrongdoing.
7 Moreover, the substantive portion of BASIL’s prayer was already been granted by GSA, rendering
8 the appeal moot.

9
10 The fact that GSA has been utilizing emergency procurement for food services for the past
11 three years shows their inability to work within the procurement system, which is unconscionable.
12 A new IFB still has yet to be issued, which would further continue this cycle of utilizing emergency
13 procurement. At this point, it cannot be determined whether the actions of GSA are due to
14 incompetence, ineptitude, or are intentional.

15
16 The procurement record filed by GSA did not indicate any emergency procurement
17 declaration signed by the Governor in December 2018 or any new purchase order for the new 90-
18 day period beginning January 2019, which shows that there is an incomplete procurement record.

19
20 Because the contract has already been completed, there is no option to cancel the contract as
21 a remedy for BASIL. BASIL is instead requesting OPA acknowledge that the actions by GSA in
22 awarding the contracts were improper and contrary to law, and grant Attorney’s fees for filing
23 motions and the appeal.

24 **CONCLUSION**

25
26 Based on the foregoing, the Public Auditor hereby GRANTS the GSA’s Motion to Dismiss
27 the Appeal. However, GSA is admonished for its actions in continuously using emergency
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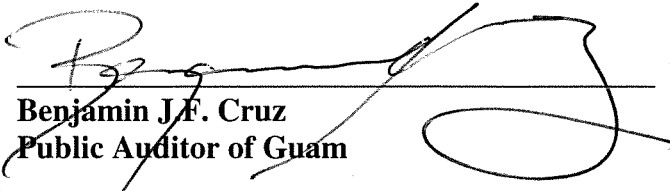
1 procurement for three years. GSA should issue the new IFB for services immediately. The Hearing
2 scheduled for June 13, 2019, is hereby vacated.

3
4 Although the Public Auditor would like to grant Attorney's fees to BASIL due to the
5 government's actions, he can only award reasonable costs, excluding Attorney's fees, pursuant to 5
6 G.C.A. §5425(h). Therefore, BASIL's request for Attorney's fees is hereby denied.

7 This is a Final Administrative Decision. The Parties are hereby informed of their right to
8 appeal from a Decision by the OPA to the Superior Court of Guam, in accordance with Part D of
9 Article 9, of 5 G.C.A. §5481(a) within fourteen (14) days after receipt of a Final Administrative
10 Decision.

11
12 A copy of this Decision shall be provided to the parties and their respective attorneys, in
13 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website
14 www.opaguam.org.

15
16 **SO ORDERED** this 11th day of June 2019 by:

17
18
19 
20 **Benjamin J.F. Cruz**
21 **Public Auditor of Guam**