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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
DATE: 5-22-13  
TIME: 3:25  AM  PM BY: JBG  
FILE NO OPA-PA: 13-004

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
HAGÁTÑA, GUAM

IN THE MATTER OF K CLEANING ) OPA-PA-13-004  
SERVICES )  
)  
APPELLANT )  
) **OBJECTION TO**  
) **APPELLANT'S REQUEST**  
) **FOR A STAY**  
)  
)  
)

**COMES NOW** Guam International Airport Authority by and through Counsel Fisher & Associates, by attorney Thomas J. Fisher, and enters an Objection to a Request for a Stay

**\*\*\* Statement of Fact \*\*\***

Appellant filed a Request for Entry of a Stay in the Office of Public Accountability on 22 May 2013 at 11:50 a.m. He then waited two hours to serve said Request on the interested Agency. Appellant has known for at least seven days that the Agency made an award and has made no protest or objection (including raising the issue at a hearing on 21 May 2013) until today.

Appellant asks the Office of Public Accountability (OPA) to enter a "stay" in this appeal but does not say what it is he wishes to be stayed. Appellant further states that the OPA has the authority to enter such a stay but does not cite to any such authority.

Appellant filed a "complaint" with the Agency on 04 April 2013. The Agency issued its

1 decision on 18 April 2013 (Appellant claims he didn't receive it until 22 April 2013). On 02  
2 May 2013 the GIAA awarded the contracts. Twenty days after the Agency issued its decision, *at*  
3 *least* sixteen days after the Appellant received the decision, and after the award, he filed an  
4 untimely appeal. He now asks for an "equitable" stay based upon a perceived defect in the  
5 Agency decision.

6  
7 **\*\*\* Opposition \*\*\***

8 The automatic stay provisions of 5 Guam Code Ann. §5425(g) were inapplicable once  
9 the Agency issued its decision on the protest. *See In the Appeal of Guam Publications, OPA-PA-*  
10 *08-007 at page 18-19.* The Agency does not argue that the 02 May Notice of Award "cutoff the  
11 automatic stay", the Agency notes that the rendering of a decision on 18 April did. It is clear that  
12 during the period between the decision and the filing of the appeal, the Agency was free to  
13 proceed with an award. *See Guam Publications, Id.*

14 Appellant argues though that he is entitled to equitable relief because of a perceived  
15 defect in the Agency decision. There is no authority for this and the decision was effective. *See*  
16 *In the Appeal of Eons Enterprises, Inc., OPA-PA-10-003*, "Here, although GCC failed to  
17 advise the Appellant of its right to administrative and judicial review, GCC did deny  
18 Appellant the re-evaluation of the bids Appellant was seeking and GCC stated the reasons for  
19 its denial of said relief. Further, GCC issued its decisions promptly. Thus, the Hearing  
20 Officer finds that GCC's May 10, 2010 Letter was GCC's decision to deny Appellant's May  
21 3, 2010 protest." *Id at pp 5-6.*

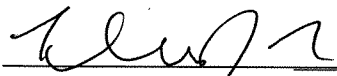
22  
23 If the OPA believes an equitable stay is appropriate, then it can only be because it sees  
24 the Agency decision as ineffective. If this is the case, the OPA is without jurisdiction over the  
25 appeal. *See In the Appeal of Town House Department Stores v. IBSS, OPA PA- 08-003,*

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“[t]his matter is not ripe for the Public Auditor’s review because GPSS has not rendered a decision on IBSS’s December 4, 2007 protest . . . . Thus without a GPSS decision of IBSS’s December 4, 2007 protest, this matter is not properly before the Public Auditor and the Public Auditor does not have jurisdiction to hear it.” The effectiveness of the Decision is established though. *See Appeal of Eons Enterprises, Inc, supra.* Appellant was simply late filing an appeal and there is no basis for a stay, equitable or otherwise.

**WHEREFORE** Agency GIAA prays the Public Auditor Deny a Request for a Stay.

**FISHER & ASSOCIATES**

  
\_\_\_\_\_  
**Thomas J. Fisher, Esq.**  
**For GIAA**