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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 12/12/13

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FILE NO OPA-PA: 13-006

**THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEAL**

In the Matter of Appeal of	)	Docket Number: OPA-PA-13-006
	)	
DFS Guam L.P., Appellant	)	<b>OBJECTION TO APPOINTMENT</b>
of the Decision of the	)	<b>OF HEARING OFFICER</b>
A.B. Won Pat International	)	<b>AND NOTICE OF JUDICIAL</b>
Airport Authority, Guam	)	<b>PROCEEDINGS</b>
_____	)	

Pursuant to 2 GARR, Div. 4, § 12103(b), Lotte Duty Free Guam, LLC ("Lotte") hereby objects to the appointment of a hearing officer in the above-entitled procurement appeal and gives notice that there are pending judicial proceedings concerning the procurement at issue. The Supreme Court of Guam is currently entertaining two appeals from Superior Court Case No. CV0685-13. See *DFS Guam, L.P. v. A.B. Won Pat International Airport Authority, et. al.*, Sup. Ct. Guam CVA13-035 (filed November 8, 2013); and *DFS Guam, L.P. v. A.B. Won Pat International Airport Authority, et. al.*, Sup. Ct. Guam CVA13-036 (filed November 12, 2013). Superior Court Case No. CV0685-13 concerns the identical factual and legal issues presented in this procurement appeal.

Under 2 GARR, Div. 4, § 12103(b), the "[p]arties are required to notify and provide copies to the Public Auditor within 24 hours of any action in court concerning the procurement under Appeal." *Id.* (emphasis added). Lotte is not a party to this procurement appeal; rather, Lotte is an interested party who has recently entered a special appearance in the matter. However, DFS, as a named party to the instant

procurement appeal, was required to provide the OPA with notice of any pending judicial action within 24 hours of such filing. The appeals before the Supreme Court of Guam were filed on November 8, and 12, 2013, respectively, yet more than one month later, DFS still has failed to file with the OPA a notice of the pending appellate cases. DFS has ignored its duty to the OPA by failing to file the required notice. This failure to provide the OPA with proper notice and abide by section 12103(b) appears intentional, as DFS is currently disregarding the provisions of 2 GARR, Div. 4, § 12103(b) and attempting to persuade the OPA to begin to take action in the procurement appeal. See DFS' Request to Lift Stay (filed November 22, 2013). As a competing offeror who is interested in this procurement appeal, Lotte hereby corrects DFS' deficiency by giving the OPA the appropriate notice of the filed court actions.

On the basis of these pending court actions, Lotte also objects to the appointment of a hearing officer. See Notice of Appointment of Hearing Officer (filed December 3, 2013) ("Any objection to appointment shall be filed within ten days of the date of this notice of appointment."). Under 2 GARR, Div. 4, § 12103(b), the OPA is not permitted to take any action in an appeal filed before it when any action concerning the procurement under appeal has commenced in court. See *Harbour Centre Guam Co., Ltd.*, Superior Court of Guam Special Proceedings Case No. SP0226-10 (Dec. & Order, Apr. 20, 2011) (limiting exceptions under section 12103 to notifying the parties that the Public Auditor would be taking no further action in the proceedings or declination of the matter). This provision precludes any and all action in the case by the OPA, which would include the appointment of a hearing officer. *Id.*

The purposes of the provision are to avoid the waste of resources of the OPA and the parties before a final determination has been reached in the courts of Guam, and to ensure that there are no conflicting determinations. The issues pending before the Supreme Court of Guam directly affect this OPA appeal. In Civil Action No. CV0685-13, the Superior Court purported to make factual findings regarding the timeliness of protests filed by DFS. Lotte and the A.B. Won Pat International Airport Authority (hereinafter "GIAA") seek review of these findings before the Supreme Court of Guam, because such findings may affect the jurisdiction of the OPA to consider and review the protests filed by DFS.

Furthermore, no order has ever issued from the OPA which would allow Lotte, as an Interested Party, to calculate the time period under 2 GARR, Div. 4, § 12104(c). The Notice of Appointment of Hearing Officer was issued prior to any notice or order informing the parties whether the OPA was lifting the stay it previously imposed on the proceedings. The issuance of this notice creates confusion, as the OPA has not yet determined whether it may take any action in the case, and whether it has lifted the stay of the proceedings, yet it is now taking action in the case by appointing a hearing officer. As a result, it is currently impossible for the parties and Lotte to determine the effective due dates under 2 GARR, Div. 4, §§ 12104 and 12109.

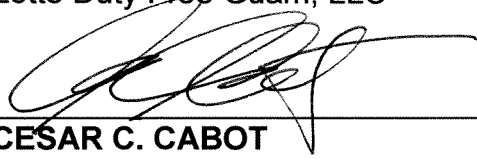
Therefore, to avoid damage to the parties and to preserve the status of the OPA proceedings as it existed before the filing of CV0685-13, until the Supreme Court of Guam has made its determination the OPA must rescind its Notice of Appointment of Hearing Officer and decline to act any further in OPA-PA-13-006 due to judicial involvement. On this basis, Lotte hereby objects to the appointment of any hearing

officer in the matter, and to any action taken by the OPA in the procurement appeal before the pending judicial actions are finally resolved.

Respectfully submitted this 12<sup>th</sup> day of December, 2013.

**CABOT MANTANONA LLP**  
Attorney for Interested Party  
Lotte Duty Free Guam, LLC

By:

  
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**CESAR C. CABOT**