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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

In the Appeal of:

DFS Guam L.P.,

Appellant.

APPEAL NO. OPA-PA-13-006

**REQUEST FOR (1) SCHEDULING
ORDER AND (2) STATUS CONFERENCE
AND HEARING**

Subject to the Office of Public Accountability's ("OPA") calendar, DFS Guam, L.P. ("DFS") respectfully requests that the OPA hold a status conference and hearing ("Conference") on or around October 29, 2014 and issue a scheduling order setting forth the proposed dates described below prior to that hearing.¹ On December 26, 2013, the OPA ordered that the stay provisions set forth at 2 G.A.R. § 12103(b) prohibited the OPA from moving forward with Appeal No. OPA-PA-13-006 ("Appeal") as a result of the appeal filed in the Guam Supreme Court of *DFS Guam L.P. v. The A.B. Won Pat International Airport Authority, Guam, Lotte Duty free Guam LLC, et. al.*, CV0685-13 ("Supreme Court Appeal"). On June 2, 2014, the Guam Supreme Court issued its Opinion ("Opinion") granting in part and denying in part The A.B. Won Pat International Airport Authority,

¹ DFS recognizes that the OPA may wish to hold a preliminary status conference in advance of the Conference to further resolve any other issues it identifies. The request for Conference is not meant to infringe, in any way, on the OPA's administrative function.

1 Guam's ("GIAA") and Lotte Duty Free Guam LLC's ("Lotte") consolidated appeals. The Supreme
2 Court of Guam ruled: (1) the Superior Court lacked jurisdiction when it observed that DFS's second
3 and third bid protests were timely and that the statutory automatic stay should have been imposed and
4 (2) GIAA's request for sanctions was unfounded. A true and correct copy of the Guam Supreme
5 Court's Decision is attached hereto as Exhibit A.

6 Given that the Supreme Court of Guam has issued its Opinion and that the Superior Court
7 now has issued, on September 10, 2014, its Amended Decision and Order (*see* Exs. B and D)
8 consistent with the Opinion, DFS now makes this request to hold the Conference to schedule the
9 several items pending before the OPA so as to permit an orderly and efficient hearing process. The
10 rationale for the Conference is set forth in greater detail below.

11 **First**, DFS requests that the OPA rule on GIAA's objection to the Public Auditor. DFS
12 opposes GIAA's request to disqualify the Public Auditor and files its Response to GIAA's Objection
13 to OPA contemporaneously with this Request. As such, this issue is now ripe for determination by
14 the OPA.

15 **Second**, DFS requests that the OPA appoint a new hearing officer. GIAA has objected to the
16 appointment of Peter C. Perez as a hearing officer. DFS does not contest GIAA's objection to the
17 disqualification of Mr. Perez and files its notice of non-objection contemporaneously with this
18 Request. As such, there is no impediment for the OPA to propose a new hearing officer. DFS
19 anticipates that by the date of the Conference, sufficient time will have passed for the parties to
20 address the propriety of the replacement hearing officer.

21 **Third**, DFS requests that the OPA order GIAA to immediately rule on the protests that DFS
22 submitted to GIAA on May 29, 2013 ("Protest No. 2") and June 7, 2013 ("Protest No. 3"). DFS has
23 sent two written requests to GIAA, urging GIAA to rule on Protest Nos. 2 and 3. Copies of that
24 correspondence are attached hereto as Exhibit C. Should GIAA deny one or both of these protests,
25 DFS is prepared to promptly appeal any such denials to the OPA in sufficient time to have those
26 appeals consolidated and considered with the current appeal.

1 **Fourth**, should GIAA deny Protest Nos. 2 or 3, DFS requests that the OPA consolidate the
2 appeals of those protests with the current appeal. The interests of efficiency and accuracy counsel
3 that these appeals, if necessary, should be consolidated and considered with the extant appeal.

4 **Fifth**, DFS requests that the OPA hold a hearing on DFS's Motion for Imposition of
5 Automatic Stay pursuant to 5 G.C.A. § 5425 and expedited relief required by Section 5425 ("Stay
6 Motion"), contemporaneously filed with this Request, at the Conference. The October 29, 2014
7 Conference date provides ample time for the parties to fully brief this motion in advance of it.

8 **Sixth**, DFS requests that the OPA order GIAA to promptly issue decisions on two related
9 debarment petitions. DFS further requests the OPA to consolidate and consider any appeals of
10 GIAA's decisions to debar Lotte or DFS with the instant appeal. Lotte filed a Petition to Debar DFS
11 on June 27, 2013, to which DFS responded on October 28, 2013. Contemporaneously with this
12 filing, DFS is filing its Petition to Debar Lotte with GIAA.

13 Based on the foregoing, DFS requests that the OPA issue the following scheduling order:

- 14 1. That GIAA shall rule on the two DFS protests pending before it—Protest Nos. 2 and
15 3—by September 19, 2014. DFS in turn shall file any appeals of GIAA's decisions within one (1)
16 week of receiving both decisions.
- 17 2. That GIAA shall file any opposition to DFS's Stay Motion by September 26, 2014,
18 and that DFS shall file any reply thereto by October 10, 2014.
- 19 3. That GIAA rule on Lotte's and DFS's respective Petitions to Debar by October 29,
20 2014. Any appeals to these rulings shall be filed with the OPA within one (1) week of the issuance of
21 both rulings.

22 Based on the foregoing, DFS requests that the OPA hold the Conference on October 29, 2014
23 to hear from the parties on, among other things, the following:

- 24 1. The hearing on the Stay Motion;
- 25 2. The production of documents and testimony by employees of the government of
26 Guam, pursuant to 2 G.A.R. § 12109(i);

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3. The production of documents and testimony by Lotte, pursuant to 2 G.A.R. § 12109(c);

4. The time, place, procedures and duration of the evidentiary hearing; and

5. The transcription of the hearing and preliminary OPA proceedings pursuant to 2 G.A.R. § 12108(e).

DFS also requests that the OPA arrange for the transcription of the status conference, the cost of which shall be shared by all parties and interested parties.

Dated: September 15, 2014

Respectfully submitted,



By: _____
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