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BASIL FOOD INDUSTRIAL SERVICES CORPORATION

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
DATE: June 28, 2016  
TIME: 10:33 AM PM BY: AG  
FILE NO OPA-PA: 16-008

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

BASIL FOOD INDUSTRIAL SERVICES  
CORPORATION,

Appellant.

Docket No. OPA-PA\_\_\_\_\_

**NOTICE OF PROCUREMENT APPEAL**

Basil Food Industrial Services Corporation brings this appeal of protest denial issued by General Services Agency of the Department of Administration.

**Appellant Information:**

Name: Basil Food Industrial Services Corporation (formerly known as Li Qun Corporation).

Mailing Address: 530 West O'Brien Drive, Hagåtña, GU 96910. For the purposes of this Appeal, please direct filings and correspondence to Basil's legal counsel: Iriarte Camacho Calvo Law Group LLC, Attn: Elyze Iriarte, Esq., 134 W Soledad Ave Ste 401, Hagåtña, GU 96910.

Business Address: 530 West O'Brien Drive, Hagåtña, GU 9691

Email Address: eiriarte@icclawgroup.com

Daytime Contact No.: 472-6813

Fax No.: 477-4375

### **Appeal Information**

Purchasing Agency: General Services Agency for the Department of Public Health and Social Services (DPHSS)

Identification of Contract: Requisition Number Q161730066 / RFQ16002366.

Decision being appealed was made on June 22, 2016 by the Acting Chief Procurement Officer, Anita Cruz. See Ex. B.

Appeal is made from a Decision denying Basil's Protest of Emergency Procurement of Nutrition Services for the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program ("ENP"), Home Delivered Meals Component and Congregate Meals Component.

Names of Competing Bidders, Offerors, or Contractors known to Appellant: SH Enterprises.

### **Statement Supporting the Appeal**

The Office of Public Accountability has jurisdiction over procurement disputes, including the present dispute. 5 GCA §§ 5427, 5706.

This case concerns the emergency procurement issued after GSA illegally terminated GSA Bid Nos. 010-14 and 011-14, which Basil had been servicing. Rather than allow Basil to cure its default, which Basil did within two days, GSA has chosen to pay exponentially higher rates out of a sole source procurement masqueraded as an emergency procurement.

Basil submitted its protest on June 14, 2016, which it supplemented on June

17, 2016. Ex. A. GSA issued its denial of the protest on June 22, 2106. Ex. B.

A. GSA Did Not Abide By Guam Law In Issuing the Emergency Procurement.

Section 5215 of Title 5 explains what must occur prior to an emergency procurement being issued and awarded. GSA "must solicit at least three (3) informal price quotations, if time allows give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the preceding twelve (12) months, and must award the procurement to the firm with the best offer, as determined by evaluating cost and delivery time." 5 GCA § 5215.

Applying the plain language of section 5215, GSA was required to: (1) obtain three quotations; (2) if time allowed, give notice to contractors from the qualified bid list who provided the needed supplies and services within the past year; then (3) award to the best offer.

GSA did not follow this process. It sought out only one quotation, not three as the law directs. GSA did so by misconstruing section 5215. According to GSA's letter denying Basil's protest, GSA claims that the relevant language of section 5215 states "GSA must solicit at least three (3) informal price quotations, if time allows must give . . .". Ex. B. That's the full excerpt which GSA claims allows it to forego obtaining three price quotations. Also, that is the only provision of section 5215 that GSA contends is relevant when issuing an emergency procurement.

Of course, that is not an acceptable method of statutory interpretation or application. In expounding on a statute, one must look at the entire law. When viewed plainly, section 5215 has three sections, all separated by commas. First, GSA must solicit at least three informal price quotations. The second section is contained

in between surrounding commas: "if time allows give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the preceding twelve (12) months." Finally, the third section states that the government "must award the procurement to the firm with the best offer, as determined by cost and delivery time." The phrase "if time allows" does not qualify the phrase that GSA must solicit at least three quotations; instead, it qualifies the phrase about giving notice to contractors from the qualified bid list. As GSA procured only one quote, it did not abide by Guam law.

Furthermore, it in essence issued an improper sole source procurement, as there is more than one vendor that could service the ENP program. GSA willingly ignored Guam law.

#### B. GSA Did Not Contact Basil

Guam law states that "if time allows [the government must] give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the preceding twelve months." 5 GCA § 5215. Basil was the ongoing provider for supplies and services under the ENP program and should have been allowed an opportunity to provide a price quotation. Basil could have located an alternative facility to provide the services, and would have done so at a much lower rate than what the Government is paying to SH.

Furthermore, in its response to the protest, GSA claims that it could not contact other vendors who did not meet the requirements under the law. It is not certain what GSA means by that. In 2015, GSA issued an emergency procurement for ENP services. The Government issued requests for quotations to at least three

vendors. It is not only legally mandated, but possible, for the Government to follow Guam law in this circumstance.

C. The Emergency Procurement Does Not Require the Vendor to Have a HACCP Plan and SH Does Not Have A HACCP Plan.

In 2013, Guam passed a new Food Code, which requires a Hazard Analysis and Critical Control Point ("HACCP") Plan under certain circumstances, including for vendors providing elderly nutrition services. In the summer of 2015, while allowing many other vendors of food services to highly susceptible populations to delay submission of a HACCP Plan, the Government closed down Basil's operations for its failure to have a HACCP Plan. The Government then issued an emergency procurement award to SH. The Government admitted, however, that no other entity had submitted a HACCP Plan, meaning that SH was allowed to serve a highly susceptible population **without** a HACCP Plan, the same reason the Government shut down Basil.

The present emergency procurement also does not require SH to have a HACCP Plan. Nor does SH have one. In preparation for this appeal, Basil submitted to DPHSS a Freedom of Information Act Request seeking copies of all HACCP Plans on file with DPHSS. Again, the Government produced no evidence that SH holds a HACCP Plan. That is despite the fact that the Government informed SH to produce a plan back on July 24, 2015. Ex. C. Therefore, SH should not be allowed to prepare food for recipients of the ENP program, and the Government should not be paying a non-compliant vendor for such services.

D. SH Is Not Qualified

In GSA's response to the protest, GSA stated that SH met the test of being a

qualified bidder in the past year. This is untrue. As Basil learned on June 24, 2016, when reviewing documents produced by DPHSS in response to a FOIA request, when SH provided emergency ENP services in July 2015, it was inspected and received so many demerits that it technically received a "D" rating. For some unknown reason, even though SH operated a D-rated establishment, the Government did not shut down SH's operations. It continued to allow SH to cook and deliver food to the manâmkok'. SH should not have been considered a qualified bidder providing the same or similar services in the past year.

Basil also notes that DPHSS has conducted further inspections of SH since it began providing emergency services in June 2016. Those inspections were related to Basil's complaints that SH was delivering food in open trucks, in violation of the Guam Food Code, and not sealing the food. Once again, however, DPHSS has refused to assign SH a grade, and DPHSS and GSA took no action against SH.

Lastly, Basil notes that SH has not complied with the procurement's requirement to submit an emergency plan. The Government has not furnished evidence of SH's emergency plan.

#### E. GSA Sought an Emergency Procurement For Beyond 30 Days

An emergency procurement should last for not more than 30 days. 2 GAR Div. 4 § 3113. GSA's May 31, 2016 Memo to the Governor seeking approval for the emergency procurement stated that the emergency period would last for 90 days, Ex. D, which is in direct violation of Guam's procurement law and regulations.

### **Relief Requested**

Basil requests that the emergency procurement and the contract awarded to

SH be immediately terminated.

Because this matter pertains to an emergency procurement, Basil requests for **expedited review of this appeal.**

Basil asks for recovery of its attorney's fees and costs in connection with this matter.

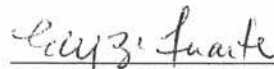
#### **Declaration re Court Action**

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

DATED: Hagåtña, GU, 28, June, 2016.

IRIARTE CAMACHO CALVO LAW  
GROUP LLC




ELYZE MCDONALD IRIARTE

Attorneys for Appellant  
BASIL FOOD INDUSTRIAL SERVICES  
CORPORATION

VERIFICATION OF MICHAEL ZHOU

GUAM USA )  
 )  
MUNICIPALITY OF HAGATNA ) SS.

MICHAEL ZHOU, being first duly sworn under oath, has read the foregoing BASIL FOOD INDUSTRIAL SERVICES CORPORATION'S NOTICE OF APPEAL, knows the contents thereof, and verifies that the same is true to the best of his knowledge and belief.

  
\_\_\_\_\_  
MICHAEL ZHOU

Subscribed and sworn to before me this 27<sup>th</sup> day of June, 2016.

  
\_\_\_\_\_  
Notary Public



**TRINA M. PEREZ**  
**NOTARY PUBLIC**  
In and for Guam, U.S.A.  
My Commission Expires: **March 02, 2017**  
P.O. Box 5087 Hagatna, Guam 96932



## **Exhibits**

- A. Basil's Protest and Supplemental Protest
- B. GSA's Denial of Basil's Protest
- C. July 14, 2015 Inspection of SH Enterprises
- D. May 31, 2016 Memorandum to the Governor
- E. Emergency Procurement for ENP Services

# EXHIBIT A



IRIARTE  
CAMACHO  
CALVO  
LAW GROUP LLC

14 JUNE 2016

**VIA HAND DELIVERY**

Anita Cruz  
Chief Procurement Officer, Acting  
General Services Agency  
148 Route 1, Marine Corps Drive  
Piti, Guam 96915

OUR REFERENCE NO:  
066987-00100

Re: **PROTEST of Emergency Procurement of Nutrition Services for the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program, Home-Delivered Meals Component and Congregate Meals Component (Requisition No. Q161730066)**

Dear Ms. Cruz:

Basil Food Industrial Services protests the Emergency Procurement issued by GSA on May 31, 2016, and the award to SH Enterprises, for the elderly nutrition program. You may reach Basil through its attorneys, Iriarte Camacho Calvo Law Group LLC, Elyze Iriarte, Esq., at 134 W. Soledad Ave., Ste. 401, Hagatna, GU 96910.

First, GSA did not obtain the requisite amount of quotations.<sup>1</sup> When procuring under conditions of an emergency, GSA "must solicit at least three (3) informal price quotations, if time allows must give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the preceding twelve (12) months, and must award the procurement to the firm with the best offer, as determined by evaluating cost and delivery time." 5 GCA § 5215.

In reading section 5215 plainly, GSA was required to (1) obtain three quotations; (2) give notice to contractors from the qualified bid list who provided the needed supplies and services within the past year; then, (3) award to the best

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<sup>1</sup> This information was obtained from documents produced by GSA on June 8, 2016, in response to a Freedom of Information Act request.

offer. GSA did not follow this process. According to Ms. Cruz's undated Memo to File, GSA sought out only one quote, from SH Enterprises, on the basis that SH had been a provider in the past twelve months. By obtaining only one quote and foregoing the mandate to solicit two more quotes, GSA violated Guam law and essentially engaged in an illegal sole source procurement. Given that the Government is paying much higher rates to SH than it was paying to the prior provider, Basil, for the same services, the Government suffered from not following the steps to get competitive quotes, and not negotiating a better deal.

Second, in the past, GSA successfully obtained three informal quotations for the same services in very similar circumstances. Just last summer, GSA obtained three quotations for emergency services this same program. This demonstrates that GSA can comply with the Guam Procurement Law's requirements to obtain three quotations, and that it was not necessary for GSA to sidestep statutory requirements.

Third, since the law requires GSA to notify bidders who have provided the needed supplies and services within the past year, GSA also should have given notice of the emergency procurement to Basil. While Basil's facility was closed by Public Health for only two days, it had the resources to locate an alternative facility that met the ENP requirements, and it would have provided a response to the request for a quotation. Again, the Government missed out on an opportunity to engage in the competitive process and obtain the best price.

Fourth, an emergency procurement should last for not more than 30 days. 2 GAR Div. 4 § 3113. GSA's May 31, 2016 Memo to the Governor seeking approval for the emergency procurement stated that the emergency period would last for 90 days, in direct violation of Guam's procurement law and regulations.

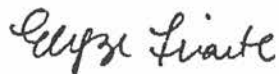
Fifth, the language of the emergency procurement makes no mention that the vendor must comply with the HACCP requirements, which are necessary under the elderly nutrition program. Again, GSA is not protecting the

substantial interests of the Territory by bypassing an important requirement that ensures the safety of the food provided to the man'amko.

Finally, Basil protests the award to SH Enterprises. There are a number of items that do not appear to be in the procurement file but which are required under the terms of the emergency solicitation: (1) an organizational chart (§ 6.1); (2) the name, resume, and ServSafe Certification of SH's manager (§ 6.6); (3) the name, resume, and ServSafe Certification of SH's Program Manager (§ 6.7); (4) the name and license of a Guam Licensed Dietitian or Guam Licensed Nutritionist (§ 6.8); or (5) SH's Emergency Management Plan (§ 4.10). Basil has also observed SH's delivery trucks violating the Guam Food Code by transporting the food prepared and delivered to the elderly under the ENP program in the back of open trucks, in violation of Guam's Food Code. Basil protests that SH is not in compliance with the procurement requirements and is not a responsive or responsible bidder.

Basil asks that this protest be granted, that the emergency procurement and award to SH Enterprises be cancelled, that Basil's contract with the Government for the ENP services be reinstated, and for any other relief available to Basil under Guam law.

Sincerely,



Elyze McDonald Iriarte

MEMO TO FILE

On May 31, 2016, the General Services Agency (GSA) was informed that the Division of Environmental Health of the Department of Public Health and Social Services (DHPSS) conducted a site inspection of Basil Food Services facility in Aniqua and had rated the company's facility with a "D" rating. A "D" rating closes the facility until they are able to fix the health and safety violations.

This facility was the location for the food services for the Elderly Food Program run by the Division of Senior Citizens of DPHSS. Because the facility was closed, food services for the Elderly program was at risk for the daily luncheon services. GSA immediately informed the Governor's legal office of the situation and that a written request for an executive order will be forthcoming once a request is received from the Department.

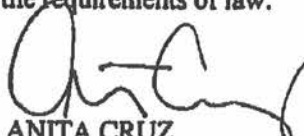
Once the request was received from DPHSS, we immediately transmitted it to the Governor's office for action and a response was received by our office after 5:00pm. We immediately contacted a vendor to see if they could be available to provide food services the next morning. They replied affirmatively and we send a request for quotation.

The next morning, June 1, 2016, we sent a copy of the emergency executive order to the Speaker's office and they submitted the purchase order to the vendor, via DPHSS Division of Senior Citizens.

GSA only requested a quotation from one (1) vendor. 5 GCA Section 5215 states in pertinent part:

...that such emergency procurement shall be made with such competition as is practicable under the circumstance, and further provided that the procurement agent must solicit at least three (3) informal price quotations, if time allows must give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the proceeding twelve (12) months...."

The sole vendor approached was the only one to provide services to the government on the same or similar within the past twelve months other than the Basil. Further, the government did not have adequate time to safeguard the insurance of providing hot meal service to the Elderly in the program. As such, GSA complied with the requirements of law.

  
ANITA CRUZ  
Acting

**Eddie Baza Calvo**  
Governor



**GENERAL SERVICES AGENCY**

(Ahensian Setblison Hinirat)  
Department of Administration

148 Route 1 Marine Corps Drive, Piti, Guam 96915  
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

**Ray Tenorio**  
Lieutenant Governor

**Christine W. Baletto**  
Acting Director  
Dept. of Administration

**Anisia B. Terlaje**  
Deputy Director  
Dept. of Administration

May 31, 2016

**Memorandum**

**To:** Governor of Guam

**From:** Chief Procurement Officer< Acting  
General Services Agency

**Subject:** Request for Emergency Declaration to provide  
Feeding Services for the Department of Social Services'  
Elderly Nutrition Program Congregate and Home Delivery

Attached is a memorandum from the Director of the Department of Public Health and Social Services' for an emergency declaration to all for the continued Elderly Nutrition Program for Congregate and Home Delivery for up to three (3) months.

As noted in their memorandum dated May 31, 2016, the Department of Public Health and Social Services' suspended the Sanitary Permit of Basil Food Industrial Services Corporation for repeated critical violations and non-compliance with local regulatory requirements administered by the Division of Environmental Health local regulatory requirements of the Hazard Analysis Critical Control Pont (HACCP) Plan, by incurring over forty (40) demerit points.

The suspension of the sanitary permit results in no further food services for both the Elderly Congregate and Home Delivery programs. The Congregate services over 15 sites serving over 780 seniors and over 1,180 homebound seniors with the provision s of a hot, nutritious meal that provides a minimum of 33 1/3 percent of the current Recommended Dietary Allowance.

The procurement of these services through an Emergency Procurement is authorized under 5 G.C.A. §5215 is necessary in order to avert a threat to the health, welfare and safety of our seniors.

Based upon the facts provided by the Department, I, ANITA CRUZ, Acting, Chief Procurement Officer for the General Services Agency do certify under penalty of perjury, that a certificate of

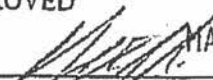
**COMMITTED TO EXCELLENCE**

emergency is not being used solely for the purpose of avoidance of the provisions of Title 5, Guam Code Annotated, Chapter 5, the Guam Procurement law.



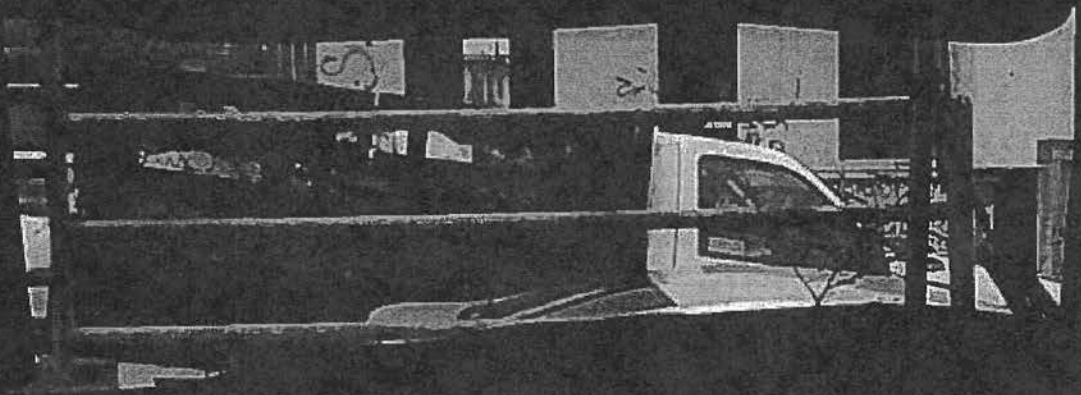
ANITA CRUZ

APPROVED

 MAY 31 2016  
EDDIE BAZA CALVO, Date  
Governor of Guam

Attachments



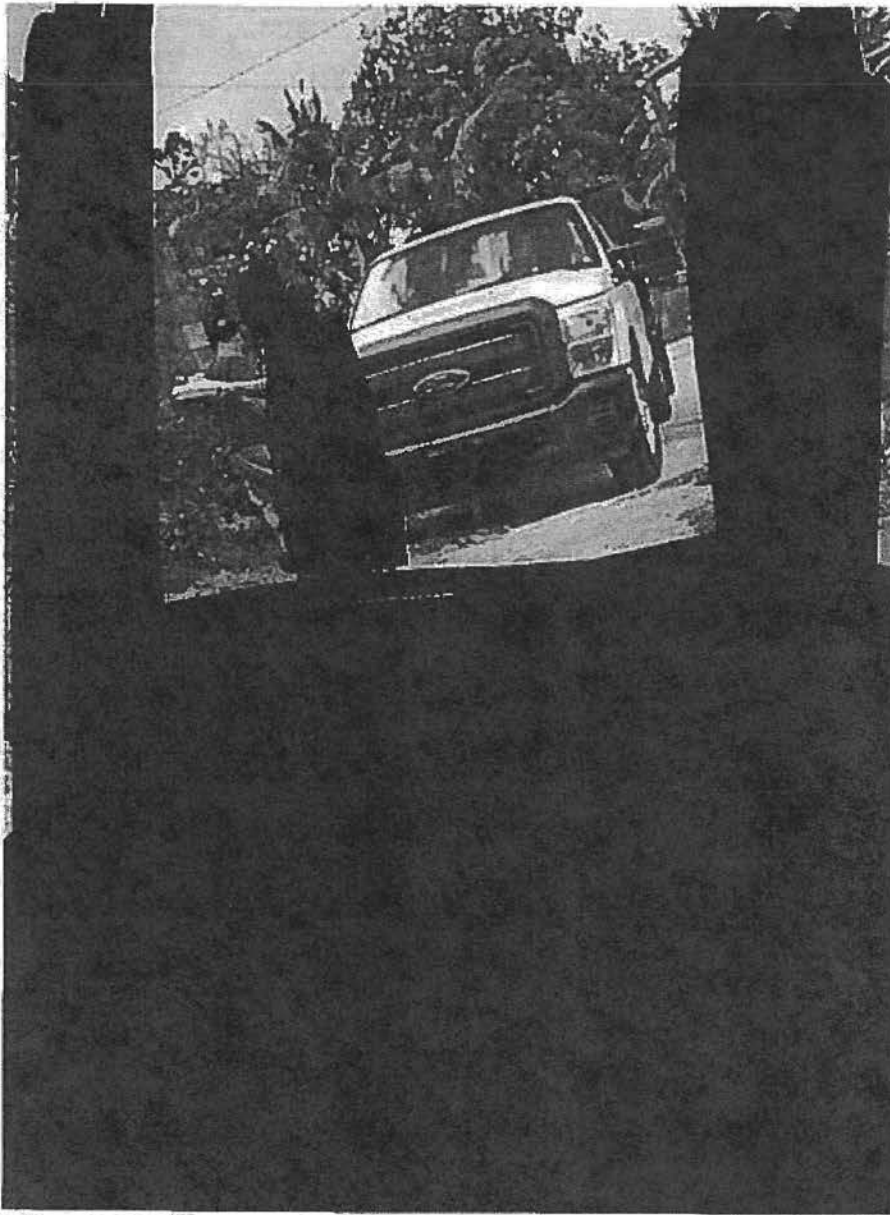


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IRIARTE  
CAMACHO  
CALVO  
LAW GROUP LLC

17 June 2016

**VIA HAND DELIVERY & FACSIMILE**

Anita Cruz  
General Services Agency  
148 Route 1, Marine Corps Drive  
Piti, Guam 96915

OUR REFERENCE NO.  
066987-00101

Re: Basil Food Industrial Services Protest of Emergency Procurement

Ms. Cruz:

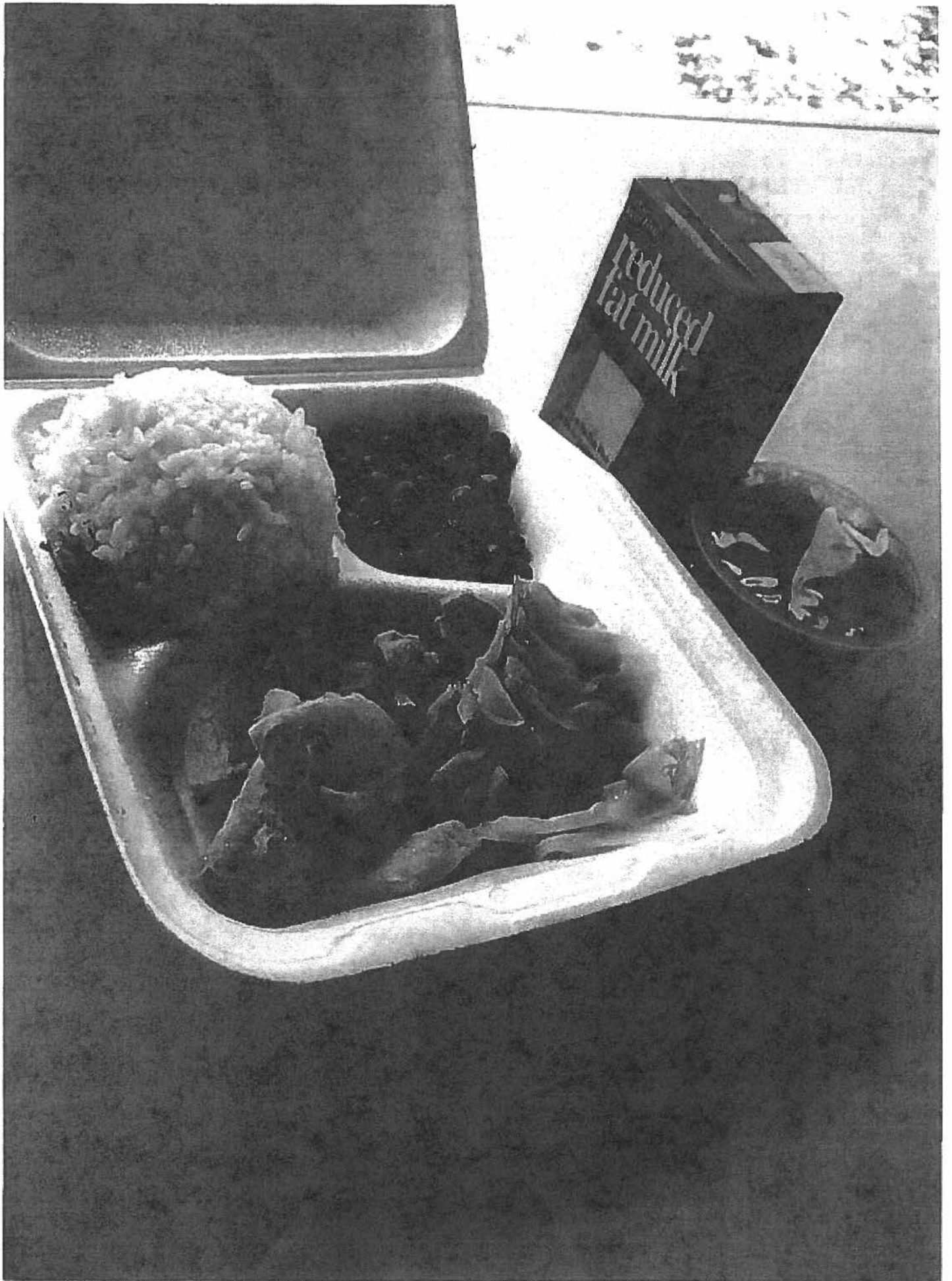
To supplement the protest submitted on June 14, 2016, I am submitting a photograph of food served by SH Enterprises on or about June 3, 2016. Per the emergency procurement and the requirements of the elderly nutrition program, the food must be in sealed containers. This photo demonstrates that the food container fails to meet the specifications of the bid.

Basil once again urges that this protest be granted and the award to SH Enterprises be cancelled.

Sincerely,

Elyze McDonald Iriarte

Enclosure



# EXHIBIT B

Eddie Baza Calvo  
Governor

**GSA**

**GENERAL SERVICES AGENCY**

(Ahensian Setbision Hinirat)  
Department of Administration

Ray Tenorio  
Lieutenant Governor

Christine W. Baletto  
Director  
Dept. of Administration

148 Route 1 Marine Corps Drive, Piti, Guam 96915  
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

Anisia B. Terlaje  
Deputy Director  
Dept. of Administration

June 22, 2016

Memorandum

Ms. Elyze Iriarte  
c/o Iriarte, Camacho, Calvo Law Group  
1134 West Soledad Ave  
Hagatna, Guam 96932

**RECEIVED** *See*  
IRIARTE, CAMACHO, CALVO LAW GROUP LLC  
DATE: 06/22/16 TIME: 10:06

Re: Protest of Emergency Procurement of Nutrition Services for Comprehensive Management, Operations and Maintenance of the Elderly Nutrition Program, Home Delivered Meals Component and of the Congregate Meals Program (GSA Bid 10-and 11-14)

We are in receipt of your memorandum dated June 14, 2016, to which you are protesting the Emergency Procurement done by the General Services' Agency on the above entitled bids. One of the basis for your protest is that GSA failed to meet the requirements for an emergency procurement.

**GSA Response:** The key provision of 5 GCA Section 5217 (Emergency Procurement), states "GSA must solicit at least three (3) informal price quotation, if time allows must give..." GSA was noticed early afternoon of the closure of the Basil facility. Immediately, we notify the Governor's office of the situation and to be prepared for an emergency request. At the same time, we informed Department of Public Health and Social Services' Division of Senior Citizens'; that we were awaiting the memorandum requesting an emergency for submission to the Governor. That arrived late in the afternoon and was transmitted to the Governor's office around 4:30pm. The Governor's office informed us by 5:00pm that evening, and we requested for quotation at that point. Obtaining three (3) quotes were not possible as the need for providing food services for the next day was not possible. As you are aware, food preparations for over 1800 seniors begins before 6am, and the request for quotation were requested after 6pm. SH was the only company on the bidders' list that met the requirements to respond to our inquiry in the evening. Therefore, this point has no merit..

The fact that on the previous emergency for the services against your company was done with three (3) quotations is correct. However, since that time, GSA has reviewed the law and discovered that two (2) of those vendors did not meet the requirement for providing services within the previous twelve months time period stated in the law, and as such, did not send out a price quote to them. This point has no merit.

**COMMITTED TO EXCELLENCE**

The idea that GSA should request a quote from a company that the Department of Public Health and Social Services' just revoked for not insuring a sanitary location to begin with, is nonsense. First, if your company did not receive a "D" rating, we would not be in this situation. Second, your company did not indicate that there was more than one (1) site or business available when you originally submitted your bid. Therefore, it failed to meet the requirements of the Executive Order, which was a company that provided same or similar services in the past twelve months. This point has no merit.

As to the Governor signing the Emergency Declaration for a period of ninety (90) days, That period would cover the period time for processing a new bid if needed. The current provider's purchase order is less than thirty (30) days for both. If the period of time to issue and award a bid, is not done within the thirty (30) days, the emergency will still be there. This information was provided to you in your previous FOIA request Therefore, there was no violation of law This point has no merit..

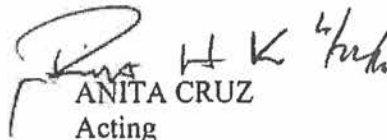
As to the vendor not having a HACCP plan at the time of the award, you were also given, a period of time to obtain a HACCP, while operating. You were given an extended period of time, while operating to obtain HACCP plan, and after numerous extensions, and a suspension of your facility, you finally obtained one. SH, the vendor under the emergency declaration has received an extension to obtain a HACCP from the Department of Public Health and Social Services' Division of Environmental Health. (see attached) Therefore, this issue has no merit.

As to the issue of several documents not in the procurement file, the bid specified that these documents were to given to the Department of Public Health and Social Services Division of Senior Citizens within a period after being awarded the bid. When GSA met with members of the Department, on June 16, 2016, the Department noted that it has the documents in their record file. (see attached) Therefore, this point has no merit.

As to the use of a "open" truck to deliver, please sent a non-altered picture which would show both the license plate and the person who was delivering for the company. Your complaint was received by the Department of Public Health and Social Services' Division of Environmental Health who found no reason to believe the complaint had merit (see attached)..

On June 17, 2016, you supplemented your protest by stating that the current emergency vendor, SH, was not sealing their food products as required. I have transmitted your concerns to the Department of Public Health and Social Services' Division of Senior Citizens for their action.(see ttached).

Based upon the above,, this protest has no merit. You may seek any administrative or judicial review authorized by law.

  
ANITA CRUZ  
Acting

# EXHIBIT C



Department of Public Health and Social Services  
Division of Environmental Health  
**Food Establishment Inspection Report**

Page 1 of 4

INSPECTION	RSN	TYPE	GRADE	INSPECTION DATE	ESTABLISHMENT NAME
Regular		<input checked="" type="checkbox"/>	N/A	07/14/12	SH ENTERPRISES, INC.
Follow-up				TIME IN	PERMIT HOLDER
Complaint			RATING	6:00 AM	SH ENTERPRISES, INC.
Investigation			N/A	TIME OUT	
Other		<input checked="" type="checkbox"/>		SANITARY PERMIT NO.	LOCATION (Address)
				15000 2709	WT 4 BLK 2 TRACT 259 ET CALVO MEM. IND. PARK TAMUN
ESTABLISHMENT TYPE		AREA	TELEPHONE	No. of Risk Factor/Intervention Violations	RISK CATEGORY
CATERING		7	699 4716	5	
				No. of Repeat Risk Factor/Intervention Violations	
				0	

**FOODBORNE ILLNESS RISK FACTORS AND PUBLIC HEALTH INTERVENTIONS**

Circle designated compliance (IN, OUT, N/O, N/A) for each numbered item. Mark "X" in appropriate box for COS and/or R.  
IN = In compliance OUT = Not in compliance N/O = Not observed N/A = Not applicable COS = Corrected on-site during inspection R = Repeat violation PTS = Demerit points

Compliance Status	COS	R	PTS	Compliance Status	COS	R	PTS
<b>Supervision</b>				<b>Potentially Hazardous Food (TCS Food)</b>			
1 (IN) OUT			6	16 (IN) OUT N/A (X) NO			6
				17 (IN) OUT (N/A) NO			6
<b>Employee Health</b>				18 (IN) OUT (N/A) NO			6
2 (IN) OUT			6	19 (IN) OUT (N/A) NO			6
3 (IN) OUT			6	20 (IN) OUT (N/A) NO			6
<b>Good Hygienic Practices</b>				21 (IN) OUT (N/A) NO			6
4 (IN) OUT N/A NO			6	<b>Consumer Advisory</b>			
5 (IN) OUT N/A NO			6	22 (IN) OUT (N/A)			6
<b>Preventing Contamination by Hands</b>				<b>Highly Susceptible Populations</b>			
6 (IN) OUT N/A NO			6	23 (IN) OUT (N/A)			6
7 (IN) OUT N/A NO			6	<b>Chemical</b>			
8 (IN) OUT			6	24 (IN) OUT (N/A)			6
<b>Approved Source</b>				25 (IN) OUT			6
9 (IN) OUT			6	<b>Conformance with Approved Procedures</b>			
10 (IN) OUT N/A NO			6	26 (IN) OUT (N/A)			6
11 (IN) OUT			6	Risk factors are improper practices or procedures identified as the most prevalent contributing factors of foodborne illness or injury. Public Health interventions are control measures to prevent foodborne illness or injury.			
12 (IN) OUT (N/A) NO			6				
<b>Protection from Contamination</b>							
13 (IN) OUT (N/A)			6				
14 (IN) OUT (N/A)			6				
15 (IN) OUT			6				

**GOOD RETAIL PRACTICES**

Good Retail Practices are preventative measures to control the introduction of pathogens, chemicals, and physical objects into foods.  
Mark "X" in box: If numbered item is not in compliance and/or if COS and/or R. COS = Corrected on-site during inspection R = Repeat violation PTS = Demerit points

Compliance Status	COS	R	PTS	Compliance Status	COS	R	PTS
<b>Safe Food and Water</b>				<b>Proper Use of Utensils</b>			
27			1	40 (X) (N/A)			1
28			2	41 (X) (N/A)			1
29			1	42			1
<b>Food Temperature Control</b>				43			1
30			1	<b>Utensils, Equipment and Vending</b>			
31			1	44 (X) (N/A)			1
32 (X) (N/A)			1	45 (X) (N/A)			1
33 (X) (N/A)			1	46			1
<b>Food Identification</b>				<b>Physical Facilities</b>			
34			1	47			2
<b>Prevention of Food Contamination</b>				48			2
35			2	49			2
36			1	50			2
37			1	51 (X) (N/A)			2
38 (X) (N/A)			1	52 (X) (N/A)			1
39			1	53 (X) (N/A)			1

I have read and understand the above violation(s), and I am aware of the corrective measures that shall be taken.

Person in Charge (Print and Sign) \_\_\_\_\_ Date: \_\_\_\_\_

DEH Inspector (Print and Sign) R. DELMONTE D. DOMINGUEZ VERONICA GARCIA Follow-up (Circle one): YES NO Follow-up Date: 07/24/12

Department of Public Health and Social Services  
Division of Environmental Health  
**Food Establishment Inspection Report**

Page 2 of 4

ESTABLISHMENT NAME <b>SH ENTERPRISES, INC.</b>		LOCATION (Address) <b>LOT 4 BLK. 2 TRACT 259 ET CALW... INDUSTRIAL PARK, TAMPUNING</b>	
INSPECTION DATE <b>7, 14, 2015</b>	SANITARY PERMIT NO. <b>150007109</b>	PERMIT HOLDER <b>SH ENTERPRISES, INC.</b>	

**TEMPERATURE OBSERVATIONS**

Item/Location	Temperature (° F)	Item/Location	Temperature (° F)
COOKED CHICKEN (HOT HOLDING) - 1	152.8°	WALK-IN CHILLER	60.9° F
COOKED CHICKEN (HOT HOLDING) - 2	144.0°		
COOKED CARROTS (HOT HOLDING) - 1	121.8°		
COOKED CARROTS (HOT HOLDING) - 2	158.6°		
WALK-IN CHILLER (KITCHEN)	72.9°		
COOKED RICE (POT) - 1	187.0°		
COOKED RICE (POT) - 2	172.8°		
COOKED RICE (POT) - 3	174.0°		
COOKED RICE (POT) - 4	177.3°		
COOKED RICE (POT) - 5	174.0°		

<b>ITEM NO.</b>	<b>OBSERVATIONS AND CORRECTIVE ACTIONS</b>	<b>CORRECT BY DATE</b>
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Violations cited in this report must be corrected within the time frames indicated, or as stated in Sections 8-405.11 and 8-406.11 of the Guam Food Code.

	AN ASSESSMENT WAS CONDUCTED, AND THE FOLLOWING VIOLATIONS WERE OBSERVED:	
8	NO SIGNAGE FOR HANDWASHING SINKS IN PACKING AREA; NO HOT WATER PROVIDED IN HANDWASHING SINKS IN KITCHEN AREA; HANDWASHING SINK NEXT TO STOVE AREA USED TO WASH DISHES (COO). HOT WATER, SIGNAGE, SOAP, AND PAPER TOWELS SHALL BE PROVIDED; HANDWASHING SINKS SHALL ONLY BE USED FOR HANDWASHING ONLY.	
13	EMPLOYEE DRINKS STORED WITH AND ON TOP OF FOOD PRODUCTS; RICE COOKER STORED RIGHT NEXT TO 3-COMPARTMENT SINK. FOOD SHALL BE PROTECTED TO PREVENT CONTAMINATION FROM OCCURRING.	
14	SANITIZING STEP NOT UTILIZED. FOOD CONTACT SURFACES SHALL BE CLEANED AND SANITIZED.	
19	COOKED CARROTS IN HOT HOLDING COOKED ABOUT 30 MINUTES AGO WITH A TEMPERATURE OF 121.8° F. HOT HOLDING TEMPERATURES SHALL BE 140° F AND ABOVE.	

Based on the inspection today, the items listed above identify violations which shall be corrected by the date specified by the Department. Failure to comply may result in further regulatory actions. If seeking to appeal the result of this inspection, a written request for hearing must be submitted to the Director before the indicated correction date.

Person in Charge (Print and Sign) <b>R. DEL MUNDO</b>	Date: <b>7/14/15</b>
DEH Inspector (Print and Sign) <b>K. DEL MUNDO</b>	Date: <b>07/14/2015</b>

Department of Public Health and Social Services  
Division of Environmental Health

Food Establishment Inspection Report

Page 3 of 4

ESTABLISHMENT NAME SH ENTERPRISES, INC		LOCATION (Address) LOT 4 BLK. 2 TRACT 259 ET CALVO MEN INDUSTRIAL PARK, TAMUNING	
INSPECTION DATE 7, 14, 2015	SANITARY PERMIT NO. 150002769	PERMIT HOLDER SH ENTERPRISES, INC.	

ITEM NO.	OBSERVATIONS AND CORRECTIVE ACTIONS	CORRECT BY DATE
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Violations cited in this report must be corrected within the time frames indicated, or as stated in Sections 8-405.11 and 8-406.11 of the Guam Food Code.

26	NO HACCP PLAN IN PLACE. ESTABLISHMENTS SERVING TO A HIGHLY SUSCEPTIBLE POPULATION SHALL HAVE A CERTIFIED HACCP PLAN IN PLACE. CHICKEN PH	
32	RAW <del>BEER</del> THAWED AT ROOM TEMPERATURE. APPROVED THAWING METHODS SHALL BE USED.	
33	THERMOMETERS FOR BOTH WALK-IN CHILLERS NOT ACCURATE. THERMOMETERS SHALL BE ACCURATE TO ENSURE PROPER TEMPERATURES	
38	WIPING CLOTHS NOT STORED IN SANITIZING SOLUTION. WIPING CLOTHS SHALL BE STORED IN SANITIZING AFTER EACH USE.	
41	UTENSILS AND EQUIPMENT (NOT USED OFTEN) STORED DIRECTLY ON THE FLOOR. UTENSILS AND EQUIPMENT SHALL BE STORED AT LEAST SIX INCHES ABOVE THE GROUND.	
44	WALK-IN CHILLER IN KITCHEN WITH AN AMBIENT TEMPERATURE OF 72.9°F; WALK-IN CHILLER IN STORAGE AREA WITH AN AMBIENT TEMP OF 60.9°F; BOTH WALK-INS STORE PRE-PACKAGED PRODUCTS AND PRODUCE, SUCH AS ONIONS, POTATOES, AND CARROTS. EQUIPMENT SHALL BE PROPERLY CONSTRUCTED AND MAINTAINED; COLD HOLDING TEMPERATURES SHALL MEET TEMPERATURES OF 41°F AND BELOW.	
45	NO TEST KITS PROVIDED; <del>A</del> 3-COMPARTMENT SINK MISSING A PLUG AND PREVENTS WATER FROM BEING COLLECTED TO PROPERLY SUBMERGE AND SANITIZE UTENSILS AND EQUIPMENT. TEST KITS SHALL BE PROVIDED; EQUIPMENT AND UTENSILS SHALL BE PROPERLY SANITIZED IN MAINTAINED WAREWASHING FACILITIES.	

Based on the inspection today, the items listed above identify violations which shall be corrected by the date specified by the Department. Failure to comply may result in further regulatory actions. If seeking to appeal the result of this inspection, a written request for hearing must be submitted to the Director before the indicated correction date.

Person in Charge (Print and Sign) *[Signature]* Date: *7/14/15*

DEH Inspector (Print and Sign) *[Signature]* Date: *07/14/15*

Department of Public Health and Social Services  
 Division of Environmental Health  
**Food Establishment Inspection Report**

Page 4 of 4

ESTABLISHMENT NAME <u>SH ENTERPRISES, INC</u>		LOCATION (Address) <u>LOT 4 BLK 2 TRACT 25A ET CALVO MGM. INDUSTRIAL PARK, TAMUNING</u>	
INSPECTION DATE <u>7, 14, 2015</u>	SANITARY PERMIT NO. <u>150002709</u>	PERMIT HOLDER <u>SH ENTERPRISES, INC</u>	

ITEM NO.	OBSERVATIONS AND CORRECTIVE ACTIONS	CORRECT BY DATE
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Violations cited in this report must be corrected within the time frames indicated, or as stated in Sections 8-405.11 and 8-406.11 of the Guam Food Code.

<u>51</u>	<u>OUTSIDE GARBAGE FACILITY NOT FULLY ENCLOSED (MISSING COVERS)<sup>a</sup> GARBAGE / REFUSE FACILITY SHALL BE ENCLOSED TO PREVENT THE ATTRACTANT OF PESTS.</u>	
<u>52</u>	<u>STORAGE ROOMS IN THE BACK FILLED WITH UNNECESSARY ARTICLES; MISSING CEILING TILES IN STORAGE ROOM. PHYSICAL FACILITIES SHALL BE PROPERLY MAINTAINED AND CLEANED AS OFTEN AS NECESSARY.</u>	
<u>53</u>	<u>NO LIGHTS PROVIDED IN BOTH WALK-IN CHILLER AND ONE OF STORAGE ROOMS; NO LIGHT SHIELD PROVIDED FOR ONE OF BACK STORAGE ROOM STORING EQUIPMENT AND UTENSILS. LIGHT SHALL BE PROVIDED FOR WALK-IN CHILLERS AND STORAGE (AT LEAST 10 FOOT CANDLES) AND LIGHT SHIELDS SHALL BE PROVIDED.</u>	
	<u>BRIEFED PIC, JOE USALLA, ON ABOVE.</u>	
<u>55</u>	<u>WRONG CATEGORY FOR HONG, SOON JA HEALTH CERTIFICATE (FOOD ESTABLISHMENT).</u>	
	<u>PROVIDED HACCP LETTER.</u>	

Based on the inspection today, the items listed above identify violations which shall be corrected by the date specified by the Department. Failure to comply may result in further regulatory actions. If seeking to appeal the result of this inspection, a written request for hearing must be submitted to the Director before the indicated correction date.

Person in Charge (Print and Sign) <u>[Signature]</u>	Date: <u>7/14/15</u>
DEH Inspector (Print and Sign) <u>R. DEL MONTE</u>	Date: <u>07/14/15</u>

# EXHIBIT D

**Eddie Baza Calvo**  
Governor



**GENERAL SERVICES AGENCY**

(Ahensian Setblision Hinirat)  
Department of Administration

148 Route 1 Marine Corps Drive, Piti, Guam 96915  
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

**Ray Tenorio**  
Lieutenant Governor

**Christine W. Baletto**  
Acting Director  
Dept. of Administration

**Anisia B. Terlaje**  
Deputy Director  
Dept. of Administration

May 31, 2016

Memorandum

To: Governor of Guam

From: Chief Procurement Officer< Acting  
General Services Agency

Subject: Request for Emergency Declaration to provide  
Feeding Services for the Department of Social Services'  
Elderly Nutrition Program Congregate and Home Delivery

Attached is a memorandum from the Director of the Department of Public Health and Social Services' for an emergency declaration to all for the continued Elderly Nutrition Program for Congregate and Home Delivery for up to three (3) months.

As noted in their memorandum dated May 31, 2016, the Department of Public Health and Social Services' suspended the Sanitary Permit of Basil Food Industrial Services Corporation for repeated critical violations and non-compliance with local regulatory requirements administered by the Division of Environmental Health local regulatory requirements of the Hazard Analysis Critical Control Point (HACCP) Plan, by incurring over forty (40) demerit points.

The suspension of the sanitary permit results in no further food services for both the Elderly Congregate and Home Delivery programs. The Congregate services over 15 sites serving over 780 seniors and over 1,180 homebound seniors with the provision s of a hot, nutritious meal that provides a minimum of 33 1/3 percent of the current Recommended Dietary Allowance.

The procurement of these services through an Emergency Procurement is authorized under 5 G.C.A. §5215 is necessary in order to avert a threat to the health, welfare and safety of our seniors.

Based upon the facts provided by the Department, I, ANITA CRUZ, Acting, Chief Procurement Officer for the General Services Agency do certify under penalty of perjury, that a certificate of


**COMMITTED TO EXCELLENCE**

emergency is not being used solely for the purpose of avoidance of the provisions of Title 5, Guam Code Annotated, Chapter 5, the Guam Procurement law.



ANITA CRUZ

APPROVED

 MAY 31 2016  
\_\_\_\_\_  
EDDIE BAZA CALVO, Date  
Governor of Guam

Attachments

# EXHIBIT E



ITEM NO.	DESCRIPTION	UOM
1.1	Nutrition Services for the comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program (ENP), Home-Delivered Meals component.	1 Month

**SCOPE OF SERVICES: PROGRAM SPECIFICATIONS**

The Vendor shall ensure meals comply with the provisions of Title III C2 Home-Delivered Meals of the Older Americans Act of 1965, as amended and the Code of Federal Regulations (45 CFR Chapter XIII, Subchapter C, Part 1321) and Dietary Guidelines for Americans published by the Secretaries of the Department of Health and Human Services and the United States Department of Agriculture and shall furnish a minimum of 33 and 1/3 percent of the current daily Recommended Dietary Allowance (RDA), as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences. *All sections throughout this Emergency Procurement shall be modified in writing at any time due to changes in Federal statutes or regulations, a material change in local law, organization, or policy.*

The estimated range of meals served per day is one thousand (1,000) to one thousand two hundred (1,200) meals. For this emergency procurement, meals served per day are not expected to exceed one thousand one hundred eighty (1,180) meals. Note: On exceptional days, the minimum quantity of meals served per day will not be met on the dates identified by the Department of Public Health and Social Services, not to exceed five (5) days.

MEAL ORDERS AND ADJUSTMENTS. The Vendor shall receive meal orders of authorized clients from the DPH&SS, DSC contracted service provider for the Case Management Services (CMS) program. Meal orders shall be communicated to the ENP Vendor by the CMS service provider. Adjustments to the meal orders due to an increase or decrease of authorized clients shall be coordinated with the CMS service provider and the ENP Vendor.

The meal pattern below is a requirement of the ENP, which meals shall be based upon:

a.	Meat/Poultry/Seafood	3oz. edible portion exclusive of skin, fat and bones (after cooking); or 5 oz. which includes 3 oz. edible portion, exclusive of skin, fat and bones (after cooking) plus at least 2 oz. of casserole or mixture.
b.	Vegetable/Salad	½ cup cooked and unbuttered as a separate item; or 1 cup raw salad (e.g., cucumber or cabbage) with dressing.
c.	Rice/Bread/Mashed Potatoes	1 cup rice; or 1 serving enriched bread or dinner roll; or 1 cup mashed potatoes with gravy.
d.	Margarine/Butter	1 tsp. when bread or dinner roll is served.
e.	Milk	½ pint low fat or skim.
f.	Fruits	½ cup without syrup; or 1 whole fruit.
g.	Condiments	Individually packed salt and black pepper packets.

PROGRAM INTENT. To provide hot, nutritious meals that meet the minimum of 33 and 1/3 percent of the current daily Recommended Dietary Allowances (RDA) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences to authorized clients, in a home setting.

Nutrition Services are provided to eligible clients who are, as determined by the Case Management Services (CMS) program, to be functionally impaired because:

1. The individual is unable to perform at least two (2) of the following Activities of Daily Living (ADL) without personal assistance, standby assistance, supervision or cues: eating, dressing, bathing, toileting, transferring in and out of bed/chair, and walking; or
2. The individual has a cognitive or other mental impairment, and requires substantial supervision because he/she behaves in a manner that poses a serious health or safety hazard to the individual or to other individuals; or
3. The individual has been determined to be eligible based on a comprehensive assessment of the individual, inclusive of temporary and permanent impairments. In cases where there is no evidence manifested of the impairments, a Physician's Certification of Individual's Eligibility for Services is required for services to commence.
4. The DPH&SS, DSC reserves the option to provide Nutrition Services to the underage spouse of the eligible client, caretakers of the eligible client and to individuals residing in the home who have a disability whom otherwise meet Federal criteria.
5. The Elderly Nutrition Program Vendor shall provide the CMS information on the status of the eligible clients authorized to receive Nutrition Services, such as, and not limited to, when they attempt to deliver a meal and the authorized client is not home or is advised that the authorized client has been hospitalized. In such cases, Nutrition Services shall be suspended until the authorized client is able to receive the meal service.

**1.0 ELEMENTS OF ELDERLY NUTRITION PROGRAM HOME-DELIVERED MEALS COMPONENT**

- 1.1 NUMBER OF CLIENTS TO BE SERVED. Approximately one thousand one hundred and eighty (1,180) eligible individuals in a homebound setting.

Currently, there are 26 Areas as follows:

No	Area
1	Agana Heights
2	Agat
3	Anigua
4	Asan
5	Barrigada
6	Chalan Pago
7	Dededo
8	Harmon
9	Inarajan
10	Maina
11	Maitte
12	Malojloj
13	Mangilao
14	Merizo
15	Mongmong
16	Ordot
17	Piti
18	Santa Rita
19	Sinajana
20	Talofoto
21	Tamuning
22	Toto
23	Tumon
24	Umatac
25	Yigo
26	Yona

- 1.2 NUTRITION SERVICES: Elderly Nutrition Program services shall be provided to eligible individuals in a home setting Monday through Saturday. However, upon the Vendor being notified and authorized as funds are appropriated, allocated, and allotted by the DPH&SS, DSC,

Nutrition Services shall be provided on Sundays and/or holidays, which may include breakfast and/or dinner services. Elderly Nutrition Services shall occur no later than two (2) working days after receipt of Intake, Profile and Referral Form and Determine Your Nutritional Health Form from the CMS service provider.

## 2.0 CLIENT REGISTRATION AND MAINTENANCE

- 2.1 REGISTERED CLIENT. For the purposes of the ENP, a client who receives a home-delivered meal within the reporting fiscal year (October 1 through September 30) is counted as a registered client. The Vendor shall be responsible for registering clients and tracking deceased clients within the reporting fiscal year.
- 2.2 INTAKE, PROFILE AND REFERRAL FORM. The Vendor shall use the Intake, Profile and Referral (IPR) Form to refer eligible individuals to other Title III Aging Services.
- 2.3 MULTI-DISCIPLINARY TEAM MEETING. The Vendor, at the request of other agencies providing services to their ENP C2 clients, shall attend such meetings to assist in the coordination of services. In addition, the Vendor may request CMS to activate a Multi-Disciplinary Team to address multifaceted service issues concerning authorized clients of ENP C2.
- 2.4 AWARENESS OF ELDER CONCERNS. The Vendor shall address problems and concerns of ENP C2 clients and submit them to the DPH&SS, DSC as part of the Monthly Program Reports. A record book of problems and concerns addressed or being addressed by the Vendor shall be maintained and made available upon request by the DPH&SS, DSC for review, monitoring and other program and administrative purposes.

## 3.0 PRIORITIZATION OF SERVICES

- 3.1 Guam State Office on Aging (SOA) (DPH&SS, DSC) recognizes the unique situation in which the demand for services may outweigh the available resources; therefore, the following scale shall be used as a guideline to prioritize the provision of services to those in greatest socio-economic need, as necessary and directed by the Guam SOA. The scale will be based on a point system in three (3) focal areas, the older individual's: (1) mobility, (2) degree of existing support system, and (3) housing condition.

Greatest priority will be given to older individuals in descending order, with nine (9) being the highest possible points garnered translating to the older individual in greatest socio-economic need.

Point System	Mobility	Support System	Housing Condition
1	Cane or Walker	Support available; but not living in same household	Full concrete structure
2	Wheel chair users	Minimal support; but not regularly available	Semi-concrete structure
3	Homebound and bedridden	No support system in place	Tin and wood structure

- 3.2 Based on the need to activate this provision, the number of persons to be served will be determined by the existing conditions at the time of implementation. In the event that the number of available slots is not sufficient to provide services to the number of persons determined, to be at-risk and in need of services, the number of Activities of Daily Living (ADL) impairments will be applied to this distinct group as an additional

determining factor for services-

<b>Impairments in Activities of Daily Living (ADL)</b> – The inability to perform one or more of the following six activities of daily living without personal assistance, stand-by assistance, supervision or cues: <i>eating, dressing, bathing, toileting, transferring in and out of bed/chair, and walking.</i>	
Point System	1 point will be added to clients with 1-2 ADL impairments.
	2 points will be added to clients with 3-4 ADL impairments.
	3 points will be added to clients with 5-6 ADL impairments.

- 3.3 Another determining factor in this point system may include whether the older individual is responsible for the care of a dependent. Clients will be given an additional one (1) point if they are also caregivers. Any application of a scale of similar or like form is permissible provided prior authorization is granted by the Guam SOA. (Re: Excerpt from 2012-2015, Guam's State Plan on Aging, pages 19-20)
- 3.4 After applying the Prioritization of Services and the demand for services still outweigh the available resources the Vendor shall advise the Guam SOA who will provide additional guidance and direction to the Vendor as to other variables and/or conditions to assess to reduce the demand to meet the available resources.
- 3.5 When the Vendor receives notification from the Guam SOA to activate the application of the Prioritization of Services point system, the entire list of eligible clients shall be ranked. The entire list is defined as all who are receiving services, those on a partial or wait list, as well as new referrals.

**4.0 ELEMENTS OF ENP OPERATIONS HOME-DELIVERED MEALS**

- 4.1 OFFICE HOURS. The Vendor shall maintain office hours for the Elderly Nutrition Program from 8:00 a.m. to 5:00 p.m., Monday through Friday, except on observed Government of Guam holidays.
- 4.2 MEAL SERVICE HOURS. The Vendor shall deliver home-delivered meals no earlier than 10:00 a.m. and no later than 12:30 p.m., Monday through Friday, except on observed Government of Guam holidays. The DPH&SS, DSC reserves the option to expand meal services, which may include additional service times, as funding becomes available. No meals shall be delivered after 2:30 p.m. The Vendor must notify homebound clients, CMS and DPH&SS, DSC that meals will not be delivered after 2:30 p.m.
- 4.3 OPERATIONAL REQUIREMENTS. The Vendor shall provide the personnel, equipment and supplies to provide ENP nutrition services.
- 4.4 FOOD SAFETY AND SANITATION. The Vendor shall comply with all governing statutes and rules and regulations of the Guam Department of Public Health and Social Services and other federal and local regulatory agencies for the requirements on, but not limited to, food and safety and sanitation.
- 4.5 PREPARATION OF MEALS. The Vendor shall have the ability to prepare estimated range of one thousand (1,000) to one thousand two hundred (1,200) hot nutritious meals per service day in a central kitchen and to deliver them to authorized homebound clients.
  - a. In purchasing food, preparing and delivering meals in the performance of this program, the Vendor shall follow appropriate procedures to preserve the nutritional value and food safety of the meals provided. It

is encouraged for the Vendor to "Buy Local" for this nutrition program.

- b. Meals shall be prepared no earlier than four (4) hours prior to their delivery to the authorized homebound clients.
- c. Meals shall be low in saturated fat, sodium and cholesterol and prepared in a manner acceptable for persons with diabetes or hypertension. Monosodium Glutamate (MSG) shall not be used.
- d. Meat, fish and poultry shall be tender and easy to chew. For the authorized clients who cannot consume solid foods, mechanical meals (chopped) or pureed meals (blenderized) shall be provided upon the request of the client, their caregiver or authorized representative, or as indicated by the CMS program and is considered special meals.

4.6 MEAL PATTERN. The Vendor shall ensure meals comply with the provisions of Title III C2 Home-Delivered Meals of the Older Americans Act of 1965, as amended and the Code of Federal Regulations (45 CFR Chapter XIII, Subchapter C, Part 1321) and Dietary Guidelines for Americans published by the Secretaries of the Department of Health and Human Services and the United States Department of Agriculture and shall furnish a minimum of 33 and 1/3 percent of the current daily Recommended Dietary Allowance (RDA), as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences.

Meals must conform to the following pattern:

a.	Meat/Poultry/Seafood	3 oz. edible portion, exclusive of skin, fat and bones (after cooking); or 5 oz. which includes 3 oz. edible portion, exclusive of skin, fat and bones (after cooking) plus at least 2 oz. of casserole or mixture.
b.	Vegetable/Salad	1/2 cup cooked, unbuttered, as a separate item; or 1 cup raw salad (e.g., cucumber or cabbage) with dressing.
c.	Rice/Bread/Mashed Potatoes	1 cup rice; or 1 serving enriched bread or dinner roll; or 1 cup mashed potatoes with gravy.
d.	Margarine/Butter	1 tsp. when bread or dinner roll is served.
e.	Milk	1/2 pint low fat or skim.
f.	Fruits	1/2 cup without syrup; or 1 whole fruit.
g.	Condiments	Individually packed salt and black pepper packets.

4.7 MENU PREPARATION. The Vendor shall ensure menus are prepared for cycles of four (4) weeks and changed monthly. Menus shall be submitted by the Vendor to the DPH&SS, DSC, no more than thirty (30) working days prior to their implementation. Menus and meals substitutions shall be approved by a Licensed Dietitian (LD) or Licensed Nutritionist (LN) prior to their submittal to the DPH&SS, DSC. The signature of the LD or LN and date of their approval shall appear on the menus. The DPH&SS, DSC, shall require changes, as necessary, with respect to the appropriateness of the menus.

4.8 MONTHLY MEAL MENU DISTRIBUTION. The Vendor shall distribute approved Monthly Meal Menus to the CMS service provider. Any changes to the menu shall be communicated in writing by the Vendor to the CMS and the DPH&SS, DSC no later than the day prior to the change.

4.9 REQUESTS FOR SPECIAL MEALS. The Vendor shall provide special meals, where feasible, reasonable and appropriate, to meet the particular dietary

needs arising from the health or religious requirements of eligible clients; however, special meals do not include liquid supplement. The CMS Program Manager shall coordinate with the Vendor for the provision of special meals which shall be supported in the following manner:

- a. A senior requesting a special meal for health related reasons shall provide a signed statement from their physician or licensed nutritionist stating the medical necessity for special meals and the types of foods the clients can or cannot consume.
- b. A senior requesting a special meal for religious reasons shall provide a signed statement from their priest, rabbi, pastor, etc. attesting to the dietary requirements of their faith that meet the 33 and 1/3 percent of the current daily RDA.
- c. Vegetarian meals shall meet the most current RDA, the nutritional needs of the senior client, shall be based on careful diet planning by a registered dietitian or nutritionist based on food servings delineated in the Food Guide Pyramid and shall be approved by a physician.
- d. The CMS service provider shall provide the Vendor with copies of supporting documentation for each special menu request which the Vendor shall maintain in the client's file.

4.10 EMERGENCY MENUS. The Vendor's Emergency Management Plan shall be submitted to the DPH&SS, DSC for review and approval by DPH&SS, DSC within five (5) calendar days upon award of this emergency procurement or as specified by the DPH&SS, DSC. The plan shall include the submission of proposed emergency menus for the provision of dry goods as approved by the LD or LN for a period of three (3) days. Further, the plan shall also include that the provision of meals, as practicable, or dry goods to clients be for a period of one (1) day to three (3) days during periods of officially declared emergencies or in preparation to local efforts in response to impending or actual disasters.

4.11 PACKAGING OF MEALS. Home-Delivered Meals shall be delivered and served in pre-packaged form, which are compartmentalized sealed containers. These sealed containers shall be sanitary, convenient, and able to maintain proper food temperature and should be clearly labeled identifying Vendor, their telephone number, the preparation date, funding source: DPH&SS, DSC, Title III C2, Older Americans Act, and the following statement: Compliments, Concerns, and Complaints, to include the delivery of meals earlier than 10:00 a.m. and later than 12:30 p.m., must be reported to the Vendor.

- a. Hot food containers shall be firm, compartmentalized with each section sealed and deep enough to prevent the mixing of one type of food with another; sealed so that heat is retained and dust or foreign matter cannot enter; impermeable so that liquid does not soak through; disposable; easy to open; and made to be stacked for storing and carrying.
- b. Dinnerware shall consist of three section heavy duty plates, heavy duty cups, as applicable; heavy duty forks, knives, spoons; and cups and bowls with fitted lids for soups, salads and fruit.
- c. The Vendor shall ensure that breads, vegetables/salads, fruits, milk, and condiments are packed in compliance with health and sanitation laws.
- d. The Vendor shall ensure cold foods are packed separately from hot foods.
- e. The Vendor shall ensure that appropriate food containers and utensils for clients with disabilities are available to those clients recommended

by CMS.

- 4.12 **FOOD TEMPERATURE.** The Vendor shall ensure hot foods are maintained at or above 140 degrees Fahrenheit and cold foods shall be maintained at or below 40 degrees Fahrenheit, upon arrival to authorized clients.
- 4.13 **DELIVERY OF MEALS.** The Vendor shall ensure all meals are complete with meal order, properly packaged, labeled and ready for delivery to homebound authorized clients prior to leaving the central kitchen. The Vendor shall ensure meals be delivered no earlier than 10:00 a.m. and no later than 12:30 p.m., Monday through Saturday, except on holidays observed by the Government of Guam, or unless otherwise approved by the DPH&SS, DSC, to the home settings.
- a. ENP delivery staff shall not leave meals unattended if no one is home to receive it. Leaving the meal in a cooler or outside refrigerator is not permitted.
  - b. If the eligible individual is not home on a regular basis due to medical appointments, a willing neighbor may be authorized to receive the meal provided a consent form signed by the neighbor and approved by the CMS has been provided to the Vendor.
  - c. The Vendor shall ensure vehicles used in the delivery of meals are in compliance with the Guam Department of Public Health and Social Services (DPH&SS) Rules and Regulations Governing Eating and Drinking Establishments.
- 4.14 **MEAL COMPLAINTS.** The Vendor shall immediately report complaints regarding meals to the DPH&SS, DSC program coordinator assigned to oversee this program, as follows:
- a. Meals not delivered within the designated delivery times.
  - b. Meals that exclude certain items or do not meet specified portions.
  - c. Meals appearing disarrayed, spoiled, contaminated or otherwise undrinkable or inedible.
  - d. Any meal determined spoiled or contaminated shall be reported in the Problems and Concerns and Proposed Solutions section of the Monthly Program Reports submitted to the DPH&SS, DSC.
- 4.15 **INSPECTION REPORTS.** The Vendor shall submit a copy of all inspection reports received from government agencies inclusive of Food Service Establishment Inspection Reports shall be provided to the DPH&SS, DSC no later than 10:00 a.m., the next working day following the inspection. A copy of all Food Service Establishment Inspection Reports received from the Division of Environmental Health, Department of Public Health and Social Services shall also be submitted to the President of the Elderly Nutrition Program Council within the same time period.
- 4.16 **CLIENT FILES.** All client files shall remain confidential. The Vendor shall maintain and update individual ENP client files which shall be retained for a period of this emergency procurement and shall include the ENP client's initial referral from the CMS or services with accompanying Intake, Profile and Referral Form and subsequent updates; Determine Your Nutritional Health (DYNH) assessment checklist and updates; Nutrition Services Service Plan (Special Meal Requirements), as applicable; Signed statement from their priest, rabbi, pastor, physician or licensed nutritionist as to what foods the client can or cannot consume; Current map to client's residence; Reports of accidents/incidents

involving ENP clients and/or ENP Program staff, as applicable; and other documents as deemed necessary by the DPH&SS, DSC.

- 4.17 STANDARD OPERATING PROCEDURES. The Vendor shall ensure Standard Operating Procedures, inclusive of an Emergency Management Plan is submitted to the DPH&SS, DSC for review and approval within five (5) calendar days upon award of this emergency procurement or as specified by the DPH&SS, DSC.
- 4.18 EMERGENCY MANAGEMENT PLAN. In an effort to protect the health, safety and welfare of clients, staff and volunteers, the Vendor shall visibly post emergency telephone numbers and the established emergency procedures, as applicable. The Vendor shall provide training to staff on procedures to be followed in the event of a:
- a. fire/earthquake, to include a drill in which all staff members shall participate, with an evacuation plan visibly posted;
  - b. medical emergency, to include food poisoning situations;
  - c. physical threat, to include bodily harm situations;
  - d. severe weather or a natural disaster; and
  - e. power/water outages, etc.
- 4.19 The Vendor shall ensure the Emergency Management Plan include contingency plans to address manmade and natural disasters. The Vendor must have adequate storage and power back-up facilities, i.e. standby generator to ensure continuation to prepare meals for this food service program.
- 4.20 The Vendor shall conduct monthly drills with staff in response to a fire, earthquake, health emergencies, medical emergencies, physical threat, vehicle accidents and power and/or water outages.

#### **5.0 ELEMENTS OF STAFFING REQUIREMENTS, CERTIFICATION AND TRAINING**

- 5.1 The Vendor shall ensure staff employed for the administration and operations of the ENP are qualified to execute their respective duties and responsibilities. Upon the awarding of the ENP, the Vendor shall provide DPH&SS, DSC with written Position Description for each position involved in the direct delivery of ENP Home-Delivered Meals service.
- 5.2 The Vendor shall ensure the following requirements be met by all staff prior to employment and be current, not expired or outdated, while employed with the ENP. Tuberculosis (TB) Clearance to be renewed annually; Original Police, Court, and Traffic Clearances updated every three (3) years; Original Police, Court, and Traffic Clearances for new staff shall be dated no earlier than ninety (90) days prior to employment; Possess a High School Diploma or completion of a General Educational Development (GED) Test from a recognized institution, or successful completion of a certification program from a recognized accredited or certified vocational technical institution, in a specialized field required for the job; Annual Orientation to Title III programs and the Bureau of Adult Protective Services presented by the DPH&SS, DSC staff shall be met within the first month of each fiscal year, and new staff within thirty (30) days of employment; Current Health Certificates, which must be on the person, as required by the Division of Environmental Health, DPH&SS; and Annual completion of fire extinguisher and basic fire awareness training.



- 5.3 The Vendor shall maintain and update individual staff files of each ENP employee in its central office. The staff files shall include; current Tuberculosis (TB) clearance to be renewed annually; original Police, Court and Traffic Clearances updated every three (3) years; original Police, Court and Traffic Clearances for new staff which shall be dated no earlier than ninety (90) days prior to employment; High School Diploma or General Educational Development (GED) Test from a recognized institution, or successful completion of a certification program from a recognized accredited or certified vocational technical institution, in a specialized field required for the job; Documentation of attendance at Annual Orientation to Title III programs and the Bureau of Adult Protective Services by DPH&SS, DSC staff; Documentation of continuing education, certifications, training and workshops; copy of prior and current Health Certificates while employed with the ENP; Acknowledgement of completion of fire extinguisher and basic fire awareness training, as applicable; Acknowledgement receipt of the Bureau of Adult Protective Services Mandate, Public Law 31-278; Acknowledgement of Vendor's Drug and Smoke-Free Workplace Policy; Acknowledgement of Vendor's Equal Employment Opportunity Policy; Acknowledgement of Vendor's Standard Operating Procedures that includes Emergency Management Plan; Completed Employment Application; Position Description; and Reports of accidents and/or incidents involving ENP staff affecting the care of clients or operation of the program and actions taken towards resolution.

#### **6.0 ELEMENTS OF STAFFING QUALIFICATIONS AND RESPONSIBILITIES**

- 6.1 The Vendor shall submit an Organizational Chart illustrating the placement of the ENP with relationship to all other programs and businesses under Vendor's organization.
- 6.2 The Vendor shall submit a Staffing Pattern and Position Description of all positions for the ENP. The Position Description shall contain minimum qualifications, abilities and responsibilities of persons assigned to provide the required services. All employed staff shall meet the minimum requirements set forth in their respective position description.
- 6.3 The Vendor shall not employ an individual for the ENP Home-Delivered Meal service if: He/she has been convicted of a felony within seven (7) years prior to the date of his/her initial employment with this program; or He/she has been convicted of a drug or alcohol offense.
- 6.4 The Vendor shall ensure ENP staff, with the exception of the Executive or Program Director, Program Manager, and Licensed Dietitian (LD) or Licensed Nutritionist (LN), possess a High School Diploma or completion of a General Educational Development (GED) Test from a recognized institution, or successful completion of a certification program from a recognized accredited or certified vocational technical institution, in a specialized field required for the job. The Vendor has the option to retain ENP staff, with exception to those positions listed above or as otherwise specified in this emergency procurement, who have been employed with the ENP for the past five (5) years without incident and who do not possess a High School Diploma or completion of a General Educational Development (GED) Test from a recognized institution, or successful completion of a certification program from a recognized accredited or certified vocational technical institution, in a specialized field required for the job.
- 6.5 The Vendor shall ensure all services and activities provided by the ENP are performed in a professional, courteous, safe, and caring manner. Staff shall be sensitive, patient, and understanding in providing services to clients.

6.6 The Vendor shall provide a resume of the Executive or Program Director with at least five (5) years of experience in food service management who will be responsible for the overall management of the Elderly Nutrition Program and shall possess the experience, knowledge, and skills to accomplish the objectives of this emergency procurement. Within five (5) calendar days of official notification of award of this emergency procurement or as specified by the DPH&SS, DSC, Vendor must submit the name and copy of ServSafe Food Protection Manager's Certification or evidence of scheduled training from the Guam Community College (GCC).

- a. Maintaining current ServSafe Food Protection Manager Certification.
- b. Planning and development in the delivery of program services.
- c. Evaluation of program services and standards of operations.
- d. Resource development and grant writing activities.
- e. Fiscal management and budgeting.
- f. Community and advisory group collaboration and relations.
- g. Personnel management, training, and staff development.
- h. Contractual compliance ensuring the efficiency, effectiveness and accountability of the Elderly Nutrition Program.
- i. Shall not hold an executive position within the organization's board, as practicable.

6.7 The Vendor shall provide a resume of the Program Manager with at least three (3) years of experience in the food service industry; maintains a current ServSafe Food Protection Manager's Certification; and will ensure the daily operations of the nutrition program is performed in accordance with the agreed upon scope of services for this emergency procurement. Within five (5) calendar days of official notification of award of this emergency procurement or as specified by the DPH&SS, DSC, Vendor must submit the name and copy of ServSafe Food Protection Manager's Certification or evidence of scheduled training from the Guam Community College (GCC).

- a. Maintaining current ServSafe Food Protection Manager Certification.
- b. Ability in accessing and developing resources and services responsive to the needs of the target population to be served.
- c. Ability in refining and improving operations, work processes and quality of services responsive to the needs of the target population to be served.
- d. Ability to train and supervise, and develop the capacity of program staff and volunteers.
- e. Ability to evaluate staff and the program for effectiveness, efficiency and accountability and ensure compliance with the scope of services of this Bid.
- f. Ensure referrals are initiated with the appropriate Service Providers for clients requiring additional services.

- g. Ability to maintain complete and accurate records and prepare reports in compliance with the ENP's reporting requirements or as required through direction from the DPH&SS, DSC.
- 6.8 The Vendor shall have access to services of a Guam Licensed Dietitian (LD) or Guam Licensed Nutritionist (LN), as needed, in order to comply with the Dietary Guidelines for Americans published by the Secretaries of the Department of Health and Human Services and the United States Department of Agriculture. Within five (5) calendar days of official notification of the award of this emergency procurement or as specified by the DPH&SS, DSC, the Vendor shall submit the name and provide a copy of the license of the LD or LN (Ref. P. L. 25-192, Title 10 GCA, Chapter 12, Article 21, Part 2).
- 6.9 The Vendor shall ensure the ENP LD or LN is knowledgeable and capable of performing the following:
- a. Provide technical assistance, as required by the Vendor, to areas relating to food service for the ENP including food service equipment, purchases, recipes, portion control, food cost controls, food packaging, food delivery systems, and hygienic food service techniques for the handling and preparing of food.
  - b. The LD or LN shall, on a monthly basis, select and review ten (10) packaged meals prior to delivery to ensure specifications and requirements of the ENP are met. The Vendor shall submit a copy of the report documenting the findings and recommendations to address deficiencies identified in the review conducted by the LD or LN to the DPH&SS, DSC after each review.
  - c. Shall attend the Elderly Nutrition Program Council meetings to offer nutritional advice and guidance.
- 6.10 The Vendor shall ensure that at least one (1) staff who possesses a current ServSafe Food Protection Manager's Certification is on duty throughout the operations of the ENP. Within five (5) calendar days of official notification of award of this emergency procurement or as specified by the DPH&SS, DSC, Vendor must submit the name(s) and copy(ies) of ServSafe Food Protection Manager's Certification or evidence of scheduled training from the Guam Community College (GCC).
- 6.11 The Vendor shall ensure all ENP delivery staff is properly licensed by the Department of Motor Vehicle, Government of Guam.
- 6.12 The Vendor shall ensure the ENP Delivery staff are knowledgeable and capable of performing the following:
- a. ENP delivery staff shall place a door hanger or similar product at the home of the authorized client indicating the ENP delivery staff was present to deliver the meal and no one was home to receive the meal.
  - b. ENP delivery staff shall physically see the authorized client at least three (3) times per week to ensure the client is safe.
  - c. ENP delivery staff shall, upon returning to the office, report to the ENP Program Manager significant changes in the authorized client's condition or non-delivery of meals to the authorized client for two (2) consecutive days who in turn will notify the CMS for their follow up.
  - d. ENP delivery staff shall, upon returning to the office, report to the ENP Program Manager significant abuse of the Elderly Nutrition Program who in turn will notify the DPH&SS, DSC.

## 7.0 ADMINISTRATIVE REQUIREMENTS

- 7.1 REQUESTS FOR INFORMATION. Requests for Information by the DPH&SS, DSC shall be acted upon in a professional manner and submitted to the DPH&SS, DSC within five (5) working days unless otherwise specified in the request. Corrections to information requested shall be submitted as specified by the DPH&SS, DSC.
- 7.2 IMPROPER ACTIVITIES OF ENP STAFF. The Vendor shall report in writing to the DPH&SS, DSC within two (2) working days of learning of alleged acts of malfeasance, including embezzlement by their employees which affects the ENP. The Vendor shall file a report with the appropriate authorities and a copy shall be provided to DPH&SS, DSC.
- 7.3 COMPLAINTS, PROBLEMS, AND CONCERNS. The Vendor shall attempt to remedy non-urgent complaints, problems and concerns of clients with other service providers, vendors or health and human service agencies prior to reporting the matter to the DPH&SS, DSC. Complaints and concerns that cannot be resolved to the mutual satisfaction of all parties shall be reported in writing to the DPH&SS, DSC for assistance and guidance. Urgent complaints, problems, and concerns requiring immediate attention shall be reported to the DPH&SS, DSC as soon as possible with written communications to be submitted by 10:00 a.m. the next business day or as determined by the DPH&SS, DSC upon being notified. This shall include complaints filed against the Vendor with local or Federal agencies by clients or staff. Written notices for information or corrective action, issued by the DPH&SS, DSC, to the Vendor, shall be acted upon within five (5) working days upon receipt of notification or as specified by the DPH&SS, DSC.
- 7.4 ACCIDENTS AND INCIDENTS. The Vendor shall ensure all accidents and incidents involving injury to individuals and/or damage to property are verbally reported to the DPH&SS, DSC as soon as possible with written report submitted the following working day if it is not practicable to submit the report of the accident and/or incident the same day it occurred. A copy of reports, i.e., GPD, GFD, GMH, Mayor, etc., issued regarding the accident and/or incident shall be submitted to the DPH&SS, DSC no later than the next working day following its receipt by the Vendor. Acts of vandalism to any vehicle or facility used in the ENP shall be reported to the DPH&SS, DSC in the same manner.
- 7.5 STAFF IDENTIFICATION. The Vendor shall issue each staff a numbered photo identification card that shall be worn in clear view while on duty.
- 7.6 PROPER HYGIENE AND DRESS CODE. The Vendor shall ensure all staff practice good hygiene and maintain a professional appearance. They are required to be neat, clean, and well-groomed and are expected to serve as role models in the upkeep of one's personal hygiene. The staff shall wear clothing that is professional in appearance. Staff providing direct services to clients shall wear closed-toed shoes for safety. The staff who perform custodial or maintenance work are allowed to wear denim pants. All other staffs are to dress professionally.
- 7.7 MANAGEMENT PERSONNEL. Management personnel shall be knowledgeable of the provisions of the Vendor's Agreement with the DPH&SS, DSC and be provided copies of the Agreement and approved purchase order. The absence of the ENP Executive or Program Director, Program Manager or other key personnel for more than three (3) consecutive days shall be reported in writing to the DPH&SS, DSC naming the person(s) authorized to act on their behalf and the expected duration of the appointment.
- 7.8 PROGRAM REPORTING REQUIREMENTS. Monthly Reports with transmittal

page signed by the Program Director and Program Manager shall be complete, accurate, and received by the DPH&SS, DSC in the format provided no later than ten (10) working days after the end of the Purchase Order and shall include:

- a. Monthly Program Report (Transmittal) Form
- b. Invoice Form
- c. Monthly Meal Record and Meal Breakdown Form
- d. Accounts Receivable Activity Report Form
- e. Program Income Report Form
- f. Program Income Expenditure Report Form
- g. Monthly Statistical Report Form
- h. Monthly Program Summary Form
- i. Release of Claims Statement Form
- j. Intake Profile and Referral Form
- k. Intake, Profile and Referral Record Change and Service Update Form
- l. Determine Your Nutritional Health Form

7.9 MONTHLY PROGRAM REPORT. The Vendor shall meet with DPH&SS, DSC staff within the first week of being notified of being awarded the ENP to be orientated on the Forms to be completed to satisfy the required Program Reporting Requirements. The Vendor shall ensure all monthly fiscal program reporting requirements be prepared utilizing the Microsoft Office Excel software unless otherwise agreed upon and approved by the DPH&SS, DSC.

## **8.0 PROGRAM MONIES**

8.1 SERVICE CONTRIBUTIONS. The Vendor shall comply with the provisions of the Older Americans Act of 1965, as amended, and provide each eligible individual with an opportunity to voluntarily contribute to the cost of the ENP, a service contribution as defined in 45 CFR Part 1321.67 (Service Contribution). The Vendor shall in keeping with 45 CFR Part 1321.67 clearly inform each eligible individual that there is no obligation to contribute and that the contribution is purely voluntary; protect the privacy and confidentiality of each eligible individual with respect to the ENP eligible individual's contribution or lack of contribution; and use all collected contributions to expand the service for which the contributions were given. No eligible individual shall be denied a service because the eligible individual will not or cannot contribute to the cost of the service. This information shall be reported in the Program Income and Program Income Expenditure Reports submitted monthly to the DPH&SS, DSC.

8.2 PROGRAM INCOME. The Vendor shall safeguard Program Income generated in support of the ENP, accounting for all funds in keeping with OMB Circular A-87 and 45 CFR Part 92.25 and 45 CFR Part 1321.67. The Vendor shall establish as part of their Standard Operating Procedures written procedures that safeguard and account for all contributions, donations and fundraising activities in support of the

program. All income received and spent shall be reported in the Program Income and Program Income Expenditure Reports submitted monthly to the DPH&SS, DSC.

- 8.3 UNEXPENDED SERVICE CONTRIBUTIONS AND PROGRAM INCOME. Service Contributions and Program Income Funds shall be expended within the current purchase order. Funds not expended within the purchase order period may be used to reduce the Vendor's monthly invoiced amount. In the event the ENP purchase order is terminated or expires, all unexpended Funds is immediately due within five (5) working days, payable to the DPH&SS, DSC or to the new vendor, as directed by DPH&SS, DSC. In the event unexpended Funds is not forwarded, the Vendor's invoice shall be reduced by DPH&SS, DSC as an offset in an amount equal to the Funds not paid to the DPH&SS, DSC or to the new vendor, as directed by DPH&SS, DSC.

### 9.0 INSURANCE COVERAGE

- 9.1 The Vendor shall maintain and furnish the DPH&SS, DSC evidence of insurance coverage to protect the integrity of the program. A copy of all claims filed by the Vendor shall be provided within no more than two (2) working days to the DPH&SS, DSC.

### 10.0 PROGRAM PENALTIES

- 10.1 MEAL DELIVERY AND SPECIFICATION COMPLIANCE. Meals shall be delivered no earlier than 10:00 a.m. and no later than 12:30 p.m., unless otherwise approved by the DPH&SS, DSC. The DPH&SS, DSC may assess a penalty from the cost of the total number of meals served for early or late delivery of meals based on the following schedule:
- a. 10 to 15 minutes early or late – 20%
  - b. 16 to 20 minutes early or late – 25%
  - c. 21 to 30 minutes early or late – 40%
  - d. 31 minutes early – 100%
  - e. 31 minutes late – \$25.00 penalty per meal
- 10.2 MEAL EXCLUSION, SPOILAGE, INEDIBLE. The DPH&SS, DSC may assess a penalty based on the following percentages of the cost of the total number of meals served that day from the impacted area(s) from the meal price when any item on the menu is excluded, determined to be spoiled, does not meet the specified portions, is undrinkable or is otherwise inedible and is not replaced within the meal delivery time:
- a. 30% for meat, seafood, poultry, soup (or other main entrée)
  - b. 20% for rice, bread, mashed potatoes, roll, fruit, vegetable/salad, milk
  - c. 5% for salad dressing, condiments, margarine/butter
- 10.3 ADMINISTRATIVE. In the event the initial submission of the Monthly Program Reports are incomplete, inaccurate or missing, and upon being notified by the DPH&SS, DSC, the Vendor shall have three (3) working days to submit or resubmit the required reports, and upon being cleared by the DPH&SS, DSC, no penalties will be applied. If further corrections to the Monthly Program Reports are needed, the DPH&SS, DSC will assess a penalty of half of one percent (.005) for incomplete, inaccurate or late

submission of any of the required Monthly Program Reports and shall be calculated after any disallowed costs to the monthly invoice amount is applied.

- 10.4 PERSONNEL AND CLIENT FILES AND RECORDS. Personnel and client files and records shall be kept current and filed accordingly. The Vendor shall have three (3) working days to correct personnel and client files and records identified to be incomplete, inaccurate, missing, outdated or expired. After the third work day has passed and the Vendor has not rectified the identified deficiency to the satisfaction of the DPH&SS, DSC, the Vendor will be assessed a flat penalty of Twenty-Five Dollars (\$25.00) for each personnel and client files and records identified to be deficient.

#### 11.0 COMPENSATION FOR SERVICES

- 11.1 The Elderly Nutrition Program Home-Delivered Meals nutrition services being acquired is funded by the Department of Health and Human Services, Administration for Community Living, through the Older Americans Act, As Amended, Grant Number: 15AAGUT3HD, Catalog of Federal Domestic Assistance (CFDA) Number 93.045, Title III C2 and local Government of Guam funds being allotted, allocated and certified.
- 11.2 UNAUTHORIZED SERVICES. Any unauthorized services rendered by the Vendor shall be considered a disallowed cost and shall be deducted from the monthly invoice. Any cost above the agreed amounts shall be at the expense of the Vendor.
- 11.3 Under no circumstances shall the cost per meal exceed the agreed upon cost per meal in this Agreement, nor shall the number of meals invoiced exceed the number of meals ordered.
- 11.4 Payment shall be based upon costs submitted less penalties and/or disallowed costs. Compensation based upon the aggregate of the costs submitted may be less than the agreed upon compensation but in no event shall it exceed the agreed upon compensation, unless otherwise provided for.
- 11.5 The Vendor will be compensated upon the clearance of monthly invoices by DPH&SS, DSC. In any reporting month and there exist a discrepancy in the statistical, narrative or financial reports submitted by the Vendor, ten percent (10%) of the invoice amount after applying any penalties and/or disallowed costs will be withheld until the discrepancy has been resolved to the satisfaction of the DPH&SS, DSC. Upon being notified by DPH&SS, DSC that the discrepancy has been resolved, the Vendor shall submit an invoice for the remaining ten percent (10%) to be processed accordingly.

#### 12.0 SPECIAL TERMS AND CONDITIONS

- 12.1 PROGRAM DATABASE. The Vendor shall be required to comply with the efforts of putting forth a unified automated information system that supports and promotes a coordinated and comprehensive system of care. This effort is spearheaded by the DPH&SS, DSC. All Title III service providers and vendors shall be collaborators and partners of this effort. The Vendor shall ensure that their staff attend training, maintain and enter data, generate reports and conduct all necessary transactions in support of this effort which will assist the Vendor in complying with the reporting requirements of the ENP. Orientation and training on the access and use of the Program Database will be coordinated and/or provided by DPH&SS, DSC and/or the software company contracted to maintain the system at no cost to the Vendor, with the exception of staff time to attend

the orientation, training and technical assistance activities in support of the Program Database. **Failure to comply with this section shall result in non-payment to the Vendor.**

- 12.2 PROGRAM DATABASE INFORMATION SYSTEM. The software Program Database Information System is currently managed by the Government. The Vendor shall be granted access upon being awarded this program and will enter data.
- 12.3 GRANTOR RECOGNITION. The Vendor shall ensure recognition of the role of the grantor agency in providing services through this emergency procurement. When a press release is issued or interview is given for any activity funded in whole or in part through this emergency procurement, reference shall be given as to the funding source and funding agency. The Vendor shall prominently identify in all publications and advertisements that funding for the item(s) is provided through the DPH&SS, DSC to include all activities, facilities, and items utilized pursuant to this emergency procurement. For example, *"This project is made possible through funds under Title III C2, Older Americans Act of 1965, as amended in 2006, administered by the Department of Public Health and Social Services, Division of Senior Citizens."* All advertisements by the Vendor about the ENP shall be submitted to the DPH&SS, DSC prior to distribution to the general public and local media.
- 12.4 ELDERLY NUTRITION PROGRAM COUNCIL. The Vendor's Executive or Program Director or Program Manager shall attend the Elderly Nutrition Program Council meetings to discuss the menus for the month, recommend menu changes and respond to questions, concerns and complaints of the ENP clients. Recommendations made by the Vendor or the Elderly Nutrition Program Council for serving cold meals, i.e., sandwiches, must be approved in writing by the DPH&SS, DSC prior to being served. The LD or LN employed by the Vendor shall attend the Elderly Nutrition Program Council meeting.
- 12.5 STANDARDS OF CONDUCT. The Vendor shall uphold the highest standards of conduct of their staff in administering services to the elderly. All staff shall abide by a zero tolerance of encouraging, accepting and receiving any type of loan, monetary gift or gratuity or any other form of financial gain from clients or their families.
- 12.6 ACTIVITIES OF PERSONNEL. The Vendor shall ensure the Vendor or its employees do not contribute or make available Older Americans Act funds, personnel or equipment to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum [Ref. 45 CFR 1321.71(h)(1)]. Further, the Vendor shall ensure the Vendor or its employees do not intentionally identify the Title III Aging program or the Vendor with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office [Ref. 45 CFR 1321.71(h)(2)].
- 12.7 REMOVAL AND TERMINATION OR SUSPENSION OF PROGRAM PERSONNEL. The DPH&SS, DSC, retains the absolute right and authority to demand removal and termination or suspension from the ENP for reasonable cause; any personnel furnished by the Vendor when DPH&SS, DSC determines this management intervention is required to be executed to safeguard the ENP. A disregard of Federal and local laws, regulations, policies, and non-compliance or non-performance with a contracted provision or provisions, but not limited to, shall be considered reasonable cause. The Vendor's personnel policy and procedures used in the management of their personnel shall include this provision.



- 12.8 TERMINATION FOR NON-COMPLIANCE WITH REGULATORY REQUIREMENTS. In the event the Vendor who is awarded this emergency procurement for the provision of ENP Nutrition Services is issued a "C" rating from the Division of Environmental Health, DPH&SS or is issued a "Stop Order" by the Guam Fire Department, the awarded Vendor may be terminated as the Vendor of the ENP Nutrition Services.
- 12.9 DUPLICATION OF SERVICES. The Vendor shall ensure that all ENP nutrition services are provided in an efficient and effective manner and where possible coordinated with other appropriate community service providers.
- 12.10 REPORT OF ABUSE OR NEGLECT OF SENIORS AND ADULTS WITH A DISABILITY. The Vendor shall immediately make a verbal report of suspected cases of abuse or neglect of elders and adults who have a disability and provide a written report within forty-eight (48) hours to the Bureau of Adult Protective Services, DSC or its contracted Service Provider of the Emergency Receiving Home with a Crisis Intervention Hotline. (Ref. P.L. 31-278, Title 10 GCA, Chapter 2).
- 12.11 REPORT OF ABUSE OR NEGLECT OF CHILDREN. The Vendor shall immediately make a verbal report of suspected cases of abuse or neglect of children and provide a written report within forty-eight (48) hours to the Child Protective Services Unit, Bureau of Social Services Administration (Ref. P.L. 20-209, Title 10 GCA, Chapter 88).
- 12.12 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA). The Vendor shall comply with the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 and the Federal "Standards for Privacy of Individually Identifiable Health Information" promulgated under 45 CFR Part 160 and Part 164, Subparts A and E.
- 12.13 SOCIAL SECURITY NUMBER CONFIDENTIALITY ACT. The Vendor shall ensure compliance relative to preventing the inappropriate disclosure and misappropriation of Social Security numbers (Ref. P.L. 28-95, Title 5 GCA, Chapter 32, Article 7).
- 12.14 ALCOHOL-FREE EVENTS. The Vendor shall ensure events funded or sanctioned through the ENP are "Alcohol Free" events.
- 12.15 CLIENT CONFIDENTIALITY. The Vendor shall ensure information obtained directly or indirectly from clients be kept confidential and cannot be released in a form that identifies the client without the informed consent of the client, or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State or local monitoring agencies (Ref. 45 CFR 1321.51). [Privacy Rule Standards for Privacy of Individually Identifiable Health Information, Ref. 45 CFR Part 160 and Part 164, Subparts A and E].
- 12.16 PROGRAM TRANSITION. All steps shall be taken by the Vendor to ensure a smooth and professional transition of the ENP to prevent any interruption of services to the clients and to preserve the integrity of the ENP.
- a. The Vendor, who has not been awarded a new purchase order under the ENP, shall immediately prepare to relinquish all program related information, files, equipment, service contributions and program income balances and all other operational, administrative, and service documents and/or items to the new vendor.
  - b. The DPH&SS, DSC shall oversee the transfer of all program related information, files, equipment, monies, etc., to the new vendor.
- 12.17 FINANCIAL MANAGEMENT SYSTEM. The Vendor shall ensure the organization

possesses a financial management system that meets the standards of the Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments in financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management. The Vendor shall ensure their accounting system shall permit timely development of all necessary cost data in the form required by the DPH&SS, DSC and is in accordance with generally accepted accounting principles (Ref. Title 5 GCA, Chapter 5, Article 3, Part E, §5236).

- 12.18 FILES AND RECORDS MAINTENANCE. All files and records pertaining to the ENP, both programmatic and financial, shall be accurate and complete and made accessible to the DPH&SS, DSC and its authorized representatives and are, at a minimum, subject to audit, monitoring, and evaluation.
- 12.19 MONITORING. Unannounced monitoring of the Elderly Nutrition Program by the DPH&SS, DSC shall not be denied by the VENDOR. Monitoring may include, but is not limited to, on-site observations of activities and/or staff, facility inspections, and discussions with clients regarding the effectiveness of the program. All documents related to the operations and delivery of services is subject to review by the DPH&SS, DSC.
- 12.20 EVIDENCE OF PAYMENT. The Vendor shall ensure a copy of receipt of payment for services is provided to the DPH&SS, DSC within twenty-four (24) hours of receipt.

-----NOTHING FOLLOWS -----