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9 *Summer Vista III DE, LLC*

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11 **PROCUREMENT APPEAL**
12 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

13
14
15
16 In the Appeal of

17
18 Summer Vista II DE, LLC and Summer Vista
19 III DE, LLC

20 Appellants

DOCKET NO. OPA-PA-25-001

**APPELLANTS' COMMENT TO THE
AGENCY REPORT**

1 **I. INTRODUCTION**

2 Summer Vista DE II, LLC and Summer Vista DE III, LLC (collectively referred to as
3 “Summer Vista”) respectfully submit their comments to GHURA’s Agency Report¹ which was filed
4 six (6) days late on February 24, 2025, pursuant to 2 GAR §12014(c)(4).

5 GHURA was also required to file its Procurement Record relating to the procurement and
6 award of the 2024 Low-Income Housing Tax Credit (“LIHTC”), but has failed to file the complete
7 record and documents as required by Guam law and as directed by the Public Auditor. *See* GHURA
8 Procurement Record filed 2/2/25; Notice of Receipt of Appeal/Transmittal dated and filed 2/5/25.

9 Guam Procurement Regulations require GHURA to include a statement in its Agency Report
10 “answering the allegation of the Appeal The statement shall be fully responsive to the allegations
11 of the Appeal.” 2 GARR § 12105(g). GHURA does not address all of the issues raised in Summer
12 Vista’s Appeal. Instead, GHURA focuses only on three issues (1) that GHURA has relied on
13 GHURA’s “Procedure for Appeal” since 2012; (2) the LIHTC program is exempt from Guam
14 Procurement law notwithstanding the Attorney General Opinion; and (3) that Summer Vista’s Protest
15 #1 and Protest #2 were untimely, therefore, the OPA does not have jurisdiction. These issues are
16 addressed below.

17 GHURA has violated the 5 GCA § 5425(g) automatic stay. Guam Procurement Law states
18 that upon timely filing of a protest, and before an award has been made, the Chief Procurement
19 Officer or head of a Purchasing Agency “shall make no award of the contract prior to final resolution
20 of such protest, and any such further action is void, unless ... [t]he Chief Procurement Officer or head
21 of the purchasing agency makes a written determination that the award of the contract without delay
22 is necessary to protect the substantial interests of the Government of Guam. *See* 2 GAR § 9101(e)(1)
23 & 5 GCA § 5425(g); *see also* 2 GAR § 12105(h) (“If the award was made after receipt of the protest,
24 the report will include the determination required under 2 GAR Section 9101(e).”). GHURA violated
25 the Guam Procurement Law by awarding the contract to Flores Rosa *after* the filing of Protest #1.
26 _____

27 ¹ GHURA was required to file its Agency Report within ten working days of receipt by GHURA of the
28 Notice of Appeal or by no later than February 19, 2025. *See* 2 GAR 12014(c)(3); *see also* Notice of
Receipt of Appeal/Transmittal dated and filed 2/5/25. GHURA filed its Agency Report on February
24, 2025.

1 The award of a contract requires the signing of the 2024 LIHTC Allocation Agreement.
2 Summer Vista recently discovered that GHURA entered into the 2025 LIHTC Allocation Agreement
3 on February 3, 2025, *after the filing of Protest #1* (January 6, 2025), in violation of the IRC and the
4 automatic stay under Guam Procurement Law. The 2025 LIHTC Carryover Agreement purporting
5 to allocate 2024 Low Income Tax Credits is neither proper nor permitted under the Internal Revenue
6 Code and the approved 2024 LIHTC QAP. See **Exhibit 1** (2025 LIHTC Carryover Agreement).
7 Moreover, GHURA did not submit an IRC § 9191(e) determination prior to entering into the 2025
8 LIHTC Allocation Agreement with Flores Rosa.

9 Also, since the filing of this Appeal, on February 3, 2025, Summer Vista filed Protest #2 and
10 on February 17, 2025 filed Protest #3. GHURA has not issued a decision on Protest #2 and Protest
11 #3. The issues in Protest #2 and Protest #3 are relevant to the issues in this Appeal and have been
12 raised by GHURA in its Agency Report. See **Exhibit 2** (3/6/25 Ltr. To E. Napoli).

13 GHURA is a Government of Guam agency but behaves as if it is an agency of the federal
14 government immune from the provisions of the Guam Procurement law and other Guam laws and
15 free to act with impunity. This is evident in its delays and failure to timely provide accurate and
16 complete information under the Sunshine Act, misrepresentations to the GHURA Board regarding
17 2024 QAP requirements, and violating the automatic stay after the filing of a protest. It ignores
18 Guam law and Guam Procurement Law and is unapologetic when called to task for its
19 noncompliance. Its refusal to comply with Guam law and directions of the Public Auditor reflects its
20 complete disdain and lack of respect for the Office of the Public Auditor and Guam law.

21 Summer Vista respectfully requests the Public Auditor issue an order confirming the stay of
22 the 2024 LIHTC Procurement and require GHURA to issue its decisions on Protest #2 and Protest #3
23 by no later than March 13, 2025.

24 **II. RELEVANT FACTS AND DEVELOPMENTS**

25 1. On January 6, 2025, Summer Vista gave GHURA notice of the facts supporting its
26 Protest #1. Protest #1 raised: (1) that the Flores Rosa application and proposal was nonresponsive
27 and did not satisfy the GHURA QAP threshold requirements; (2) that Flores Rosa LLC, its managers,
28 and the nonprofit member lacked a valid business license and were therefore not authorized to

1 transact business in Guam; (3) the evaluation process was critically flawed; and (4) the evaluation
2 scoresheet relied upon did not comply with QAP criteria. *See* Appeal, Exhibit B at 3.

3 2. On January 23, 2025, GHURA issued its decision denying Protest #1. *See* Appeal,
4 Exhibit A (1/23/25 GHURA Decision).

5 3. On February 3, 2025, Summer Vista gave GHURA notice of the facts supporting
6 Protest #2. *See* Appeal, Exhibit N (2/3/24 Summer Vista’s Protest #2). Protest #2 disputed (1)
7 GHURA’s purported Appeals Process and Procedure, including the Procedure for Appeal to Board of
8 Commissioners, and the assertion that either apply to LIHTC appeals/protests; and (2) GHURA’s
9 calculation of the time period when it denied Summer Vista’s Protest #1 on timeliness grounds under
10 Guam Procurement laws.

11 4. On February 3, 2025, GHURA entered into the 2025 LIHTC Allocation Agreement in
12 violation of the automatic stay pursuant to 2 GAR Section 9101(e)(1). Summer Vista became aware
13 of this agreement on February 7, 2025, when it finally received a late response to its January 24, 2025
14 Sunshine Act Request (“SAR”).² This was a single request SAR and there is no good faith reason
15 GHURA required a 10-day extension to produce one document (and an extension was not requested)
16 – the 2025 LIHTC Allocation Agreement. Its refusal to timely produce a single document is
17 evidence of its intent to impede Summer Vista’s protest.

18 5. On February 3, 2025, GHURA entered into the 2025 LIHTC Allocation Agreement in
19 violation of the automatic stay pursuant to 2 GAR Section 9101(e)(1). The entering into the 2025
20 LIHTC Allocation Agreement was a violation of the stay of award under 5 GCA §5425(g).

21 6. At the February 6, 2025 GHURA Board Meeting, GHURA’s legal counsel told
22 GHURA Board that GHURA’s “intent to award” the 2024 QAP LIHTC tax credits to Flores Rosa
23 was not an award, rather it was a reservation of the allocation until the Flores Rosa Project was
24 completed and determined to have met the criteria of the QAP:

25
26
27 ²On January 24, 2025 Summer Vista submitted a SAR to GHURA requesting copies of any
28 contracts signed between GHURA and Flores Rosa LLC relating to the LIHTC project. GHURA
did not seek its usual 10-day extension under 5 GCA §10103(e).

1 COMMISSIONER DELIA: Sorry. Again, just to be clear, the appeal is
2 based on the 1.73 million that was already awarded.

3 ATTORNEY FLORIG: Yes, that that is the only amount that was awarded
4 in the 2024, or *I would say reserved for, because it's not an award until its*
5 *actually the project is completed and it has met all the criteria in the QAP*
6 *and then it's done through the IRS or could be, in fact, you know rev and*
7 *tax. I'm not sure how that's done, but that will be done on a later date,*
8 *Commissioner.*

9 *GHURA BoC Meeting, Thursday, Feb. 6, 2025 (Timestamp: 54:45-55:20)*, YouTube (Guam
10 Housing and Urban Renewal Authority (GHURA), Feb. 6, 2025),
11 <https://www.youtube.com/live/BtHXraVJnNo?feature=shared>.

12 7. GHURA counsel's advice to the GHURA Board was incorrect.

13 8. During the February 6, 2025 Board meeting, GHURA Management also
14 recommended to the GHURA Board to finalize the allocation of 2024 LIHTC tax credit to Flores
15 Rosa and to close out the 2024 QAP—*i.e.* carrying over the remaining 2024 LIHTC allocation for a
16 potential 2025 QAP. This recommendation was made before the GHURA Board went into
17 execution session. *Id.* at 44:27-51:23

18 9. GHURA's legal counsel responded and advised the Board to disregard 5 GCA
19 §5425(g), the automatic stay provision in the Guam Procurement Code. *Id.* at 53:21 – 54:30.

20 10. The GHURA Board ultimately voted and adopted GHURA Management's
21 recommendations regarding the 2024 QAP. *Id.* at 1:02:19-1:04:00.

22 11. Counsel for Appellants asked the Board Chairman to address the GHURA Board in
23 order to alert them to the fact that under Guam Procurement Law, Appellants' protests had triggered
24 the automatic stay, and that following GHURA Management's and counsel's advice and
25 recommendations would violate Guam Procurement law.

26 ATTORNEY TANG: Thank you. Hi, I thank you for the opportunity, Mr.
27 Chairman. I wanted to point out that we disagree with obviously with
28 GHURA's counsel's position that denial of the protest was appropriate. Or
that the GHURA procedures – Appeals Process and Procedures – is
enforced and that its lawful to follow it.

But we have, as you're aware, filed an appeal with the OPA, and under 5
GCA § 5425(g) of the government operations Guam procurement law, it
states: that in the timely protest under subsection A of this section or under
subsection A of 5480 of this chapter, Guam shall not proceed further with

1 a solicitation or with the award of the contract prior to final resolution of
2 such protest and any such further action is void. And there's some
exceptions to it.

3 My point is this. Prior to just voting on this particular resolution which
4 was to – and I'm going to read from my notes – that there would be the
5 recommendation would be no more projects will be awarded under the
6 2024 QAP funding source and then to roll the remainder of the 2024 tax
credits into 25 – 2025 and I think that is a violation of 5425(g) because the
7 2024 LIHTC solicitation was suspended upon the filing of the appeal with
the OPA and no further actions should be taken and such actions would be
void.

8 I was trying to let you know about that prior to voting, but I understand
9 your rules. I hope the board reconsiders and I know this is, these are
difficult and complicated legal issues, but I think that an OPA appeal has
10 been filed and it's clear that the entire solicitation has been suspended.
The board should not take any action with respect to the 2024 solicitation.

11 CHAIRMAN RIVERA: Thank you, thank you, Attorney Tang for
speaking on the floor. We always appreciate your being here, but I will
12 defer to legal on this.

13 ATTORNEY FLORIG: Thank you, Counsel, I mean Chairman, excuse
me. Respectfully, with regard to Ms. Tang. We have a difference of
14 opinion and that's why we go through the process and so I'll go ahead,
and we won't um you know make any further comment on what's
15 currently happening with the Flores Rosa case until we file our documents
with the proper authorities

16 ATTORNEY TANG: May I ask one more question, Mr. Chairman, and
this is with respect I believe – I can't see him on the screen – but would
17 that be Mr. Florig? Alright. Does GHURA agree that it is required to
suspend all actions with respect to the 2024 LIHTC solicitation until such
18 time the appeal before the OPA is resolved?

19 ATTORNEY FLORIG: Again, we will go ahead and answer with our
20 filing.

21 ATTORNEY TANG: I'm sorry I didn't quite hear Mr. Florig.

22 ATTORNEY FLORIG: I said we will go ahead and answer your questions
through our filings with the OPA or any authority you plan on going to
23 next. We will go ahead and reserve for that.

24 ATTORNEY TANG: And so your advice to the board is to proceed to
violate 5425(g) because you don't think that GHURA is subject to the
25 Guam procurement law?

26 ATTORNEY FLORIG: Again, that is not our opinion of what you have
submitted to the OPA. There is just a difference of opinion there, Ms.
27 Tang. They've already made their decision. And we are still in the process
of reviewing your filings.

28 ATTORNEY TANG: With all due respect, you are not the OPA. Mr.
Chairman, my concern is that until the OPA has made a decision, I think

1 the is issue is still before the OPA, and I don't think counsel is in the
2 position to determine what laws apply if the issues are squarely before the
OPA.

3 ATTORNEY FLORIG: Well, I am legal counsel, ma'am. So, I will go
4 ahead and advise them accordingly.

5 *Id.* at 1:04:14 – 1:09:45.

6 12. On February 17, 2025, Summer Vista gave GHURA notice of the facts supporting
7 Protest #3. *See Exhibit 3* (Protest #3). Protest #3 protest GHURA's execution of the 2025 LIHTC
8 Carryover Allocation Agreement because: (1) the award violated the automatic stay under 5 GCA §
9 5425(g); (2) the award failed to comply with IRC Section 42 LIHTC regulations; (3) the award was
10 not timely under the terms of the 2024 LIHTC QAP; and (4) it improperly allocated LIHTC credits
11 with a valid QAP in violation of 26 U.S.C. § 42(m)(1).

12 13. To date, GHURA has not issued a decision on Protest #2 and Protest #3.

13 **III. ARGUMENT**

14 On January 6, 2025, Summer Vista initiated Protest #1 by sending a letter to GHURA
15 informing GHURA that it was protesting the 2024 LIHTC solicitation regarding the following issues:
16 (1) Flores Rosa Garden L.L.C.'s ("Flores Rosa LLC") application and proposal was nonresponsive
17 and did not meet the GHURA QAP threshold requirements (including site control & zoning, phase I
18 environmental assessment, and proof of non-profit status requirements); (2) Flores Rosa LLC and its
19 managers, and non-profit member, do not hold a business license and are not authorized to transact
20 business on Guam; (3) the evaluation process was critically flawed; (4) the evaluation scoresheet did
21 not comply with QAP criteria; and (5) Rosewood Park LLC, along with its manager and non-profit,
22 do not hold a business license and are not authorized to conduct business on Guam.

23 GHURA denied the protest on January 23, 2025, on timeliness grounds, but was unable to
24 clearly identify which rules or regulations it was relying upon issuing its denial. *See Appeal, Exhibit*
25 *A (1/23/25 GHURA Decision)*. On the same day, Summer Vista's counsel requested clarification
26 from GHURA asking, "[p]lease identify by close of business, Friday, January 24, 2025, which rules
27 and regulations GHURA is following with respect to this LIHTC Appeal/Protest." *See Appeal,*
28

1 Exhibit C (1/23/25 Ltr. to GHURA). To date, GHURA has refused to clarify which rules and
2 regulations it is following with respect to Summer Vista’s Appeal/Protest, leading Summer Vista to
3 file Protest #2 with GHURA on February 3, 2025. *See* Appeal, Exhibit N (Protest #2).

4
5 **A. GHURA FAILED TO MAINTAIN A PROCUREMENT RECORD REQUIRED
6 UNDER GUAM PROCUREMENT LAW**

7 GHURA failed to maintain and submit its Procurement Record as required under 2 GAR §
8 12104(c)(3). In its Procurement Record filing, the coversheet states that “GHURA did not
9 administer the 2024 Low Income Housing Tax Credit Qualified Action Plan (LIHTC QAP) or any
10 previous LIHTC QAP as a procurement matter subject to the Guam Procurement Law as the
11 allocation of tax credits are not considered buying, purchasing, renting, leasing or otherwise
12 acquiring any supplies, services, or construction by GHURA. As such, no information or documents
13 responsive to 5 GCA § 5249(a) exist” for all categories of documents required to be maintained and
14 kept under Guam Procurement Law. The fact that it maintains no records relating to the 2024
15 LIHTC QAP e.g., date, time, subject matter and names of participants at any meeting including
16 government employees, a log of all communications between government employees and any
17 member of the public, potential bidder, which is related to the procurement, and sound recordings of
18 all pre-bid conferences and negotiations, is shocking. GHURA’s lack of proper and complete
19 documentation of a government procurement involving federal tax credits allows for improper
20 communication and illicit activities, with no one being held accountable.

21 GHURA also failed to file its Agency Report within ten (10) working days of the filing of the
22 Appeal. Further, GHURA’s submission did not comply with 2 GAR § 12104(g), which requires a
23 detailed response to the allegations raised in the appeal.

24 **B. THE AGENCY REPORT DOES NOT ADDRESS THE SUBSTANTIVE
25 ALLEGATIONS IN THE APPEAL**

26 GHURA’s Agency Report addressed three issues only and did not respond to the numerous
27 substantive allegations in the Appeal. Because GHURA failed to provide substantive justification for
28 its actions, these allegations are therefore un rebutted and the Public Auditor should accept Summer

1 Vista's allegations as true.

2 Below is a list of the un rebutted allegations raised in Summer Vista's Appeal:

- 3
- 4 1. GHURA completely abdicated its duties to conduct an initial review Flores Rosa LLC
- 5 and Rosewood Park LLC's LIHTC applications to determine compliance with
- 6 mandatory threshold requirements of the QAP, and that it was a responsive and
- 7 responsible bidder:
- 8 a. Flores Rosa LLC and Rosewood LLC failed to comply with Guam law 11
- 9 GCA §70130(a) requiring businesses to have business licenses.
- 10 b. Flores Rosa LLC was required but failed to provide evidence of site control.
- 11 c. Flores Rosa LLC's Phase I Environmental Assessment Report does not comply
- 12 with QAP threshold requirement that the report address lead-based paint and
- 13 asbestos. Here, the report excluded matters relating to lead-based paint and
- 14 asbestos, and the report was not signed and certified by the environmental
- 15 engineer who conducted the assessment.
- 16 d. Flores Rosa LLC's proposed non-profit organization "The Children's Ark"
- 17 does not meet the LIHTC program requirements relating to "qualified non-
- 18 profit organizations."
- 19 2. GHURA's evaluation of the five (5) LIHTC applications was critically flawed and
- 20 compromised because the evaluators failed to follow the objective criteria for scoring
- 21 which resulted in unfair, flawed and incorrect scoring. Points were improperly and
- 22 wrongfully allocated to Flores Rosa LLC and Rosewood LLC when they clearly and
- 23 obviously did not meet the objective qualifications or requirements in the QAP.
- 24 Evaluators also considered out-of-scope matters deviating from the objective criteria
- 25 in the QAP when scoring.
- 26 3. GHURA failed to follow the QAP score sheets broken down based on the 14 Criteria
- 27 and its respective subparts established in the QAP. GHURA modified the scoresheet
- 28 by combining all of the criteria subparts for each of the 14 Criteria. This modification
- made it impossible to verify scoring compliance and accuracy because, unless the
- evaluator broke down the scoring for each Criteria subpart, it was not impossible to
- determine how many points an evaluator gave for separate criteria subparts.
4. GHURA's LIHTC 2024 Completion Review Memo prepared by GHURA
- management for the GHURA Board confirms that neither Flores Rosa LLC or
- Rosewood LLC has prior LIHTC developer experience (Criteria 5). REMAX realty
- which has no LIHTC management experience, was designated the team member who
- would be managing the LIHTC project for Flores Rosa LLC (and presumably for
- Rosewood LLC as well). Yet, four of the five GHURA's evaluators awarded the *full*
- twelve (12) points* for Criteria 5 to Flores Rosa LLC and Rosewood LLC even though
- GHURA's own memo established that neither applicant had the requisite LIHTC
- developer experience (6 points) or LIHTC project management experience (6 points).
5. GHURA made misrepresentations to the GHURA Board to cover up a deeply flawed
- administration and evaluation of the LIHTC procurement. During the December 10,

1 2024 GHURA Board meeting, GHURA’s LIHTC Chief Planner, Katherine Taitano,
2 was asked by the Chairman of the Board whether LIHTC development experience is a
3 relevant criterion in order to support GHURA management’s recommendation to
4 award the 2024 tax credits to Flores Rosa LLC and the ranking of Rosewood LLC as
5 #2. In her response, she misrepresented that LIHTC development experience *is not* a
6 criterion in the QAP. Ms. Taitano’s misrepresentation to the Board of a fact material
7 to the evaluation is evidence of the cover up of a deeply flawed evaluation and
8 mismanagement of the LIHTC QAP procurement.

- 6 6. GHURA acted in bad faith. Its wrongful conduct continued after denying Summer
7 Vista’s Protest. GHURA refused to comply with Guam law when it tried to cover up
8 the flawed evaluation process and then attempted to derail Summer Vista’s Protest by
9 ignoring Summer Vista’s request for copies of LIHTC contracts under Sunshine Act
10 and for confirmation regarding GHURA’s appeal process. The deeply flawed
11 evaluation, the lack of transparency and complete disregard for Summer Vista’s
12 requests for information under the Sunshine Act, the refusal to provide information
13 regarding LIHTC contracts, and the extensions/delays in responding to Summer
14 Vista’s SAR, are part of the cover up and mismanagement of the LIHTC QAP
15 procurement.
- 13 7. The award of the 2024 tax credit to Flores Rosa LLC, and ranking of Flores Rosa LLC
14 as #1 and Rosewood LLC as #2, was based on a flawed and unfair solicitation process
15 designed to push through the award of the 2024 tax credit to Flores Rosa LLC and the
16 remaining tax credit available to Rosewood LLC.
- 16 8. Any contract *e.g.*, allocation of credits agreement, entered into between GHURA and
17 Flores Rosa LLC purporting to allocate the LIHTC credits to Flores Rosa LLC is void
18 under Guam law because such contract was entered into in contravention of the
19 mandatory automatic stay provided for by statute, 5 GCA §5425(g).

19 Summer Vista Notice of Verified Procurement Appeal at p. 7-9 (2/4/2025).

20 Because GHURA did not address any of the above issues in its Agency Report, the Public
21 Auditor should make a finding in favor of Summer Vista as to each issue above.

22 **C. GHURA’S RESPONSES TO SUMMER VISTA’S ALLEGATIONS**

23 **(1) GHURA’S Denial of Protest #1 Based on the “Procedure for Appeal to the Board of**
24 **Commissioners” is Clear Error.**

25 Summer Vista’s argument is that GHURA has admitted “there are no documents relating to
26 the adoption, approval and promulgation of any GHURA's Appeals and Process Procedure." See
27 Appeal, Exhibit J (1/23/25 SAR Response). Summer Vista also confirmed with the Guam
28 Legislature that it was never promulgated and adopted. See Appeal, Exhibit L (1/7/25 SAR to

1 Legislature) ("after thorough search of our records, there are no 21 documents [responsive] to your
2 request.")

3 Because the so-called Procedure for Appeal to the Board of Commissioners rules were not
4 approved and adopted by the GHURA Board and were not promulgated pursuant to the
5 Administrative Adjudication Law ("AAL") at 5 GCA §9100 et seq., GHURA cannot enforce it and
6 GHURA's appeal rules has no force or bearing on this Appeal. See Appeal at 4:28.

7 GHURA's response is that (1) the Appeal to the Board of Commissioners procedure "has
8 been in place regarding appeals involving the LIHTC QAP program" and (2) the FBI and Office of
9 the Attorney General executed a search warrant at GHURA's office in 2016 and many documents
10 were seized and have not been returned to GHURA and therefore GHURA was not able to provide
11 these documents. See Agency Report at 3:7-28; 4:1-10.

12 GHURA's response does not address the legal issue of GHURA's failure to adopt and
13 promulgate GHURA's appeal rules in accordance with the AAL. GHURA also attempts to avoid
14 addressing the legal merits by arguing that Summer Vista should have known and followed appeal
15 rules that are not enforceable. GHURA has not provided any authority to support its position that an
16 agency can enforce rules that have not been adopted or promulgated in accordance with the AAL.
17 Unlike other agencies, GHURA did not publish the appeal rules on its website. Notably, it has
18 published its Procurement Policy (August 28, 2020) adopted by the GHURA Board under Resolution
19 No. FY2020-021, which states at Section XVII Appeals and Remedies that "GHURA is also bound
20 by procurement protest mechanism contained in 5 GCA Chapter 5 Article 9." See
21 https://www.ghura.org/sites/default/files/ghura_procurement_policy_2020.pdf (last visited 3/6/2025).

22 GHURA refers to the *Medallion Guam, LLC v. GHURA* (Case No. OPA-PA-001) case to
23 support its statement since "2012, the Procedure for Appeal has been in place regarding appeals
24 involving the LIHTC QAP...." The Medallion case involved an appeal of the 2011 LIHTC QAP.
25 The OPA dismissed the case due to appellant's failure to attach the agency decision. The OPA did
26 not find that LIHTC QAP solicitations are exempt from Guam Procurement Law.

27 GHURA's reliance on the FBI seizure of documents from 2016 does not address GHURA's
28 non-compliance with the AAL. While GHURA's behavior in this case makes it unsurprising that it

1 may have been the target of an active criminal investigation at some point in time, its argument that
2 that there is no record anywhere within GHURA – no file, no binder, no electronic copies stored on a
3 computer – must be viewed with considerable skepticism. GHURA could have contacted the Guam
4 Legislature to confirm whether the GHURA appeal rules had been adopted and promulgated.
5 Summer Vista was able to obtain this information from the Guam Legislature, there is no excuse why
6 GHURA could not have done this.

7 Other than offering excuses, GHURA provides no legal authority to support its position that
8 rules that have not been adopted and promulgated are enforceable against Summer Vista. To allow
9 GHURA to enforce the appeal rules that are not compliant with the AAL would be setting a
10 dangerous precedent allowing agencies to violate bidders’ due process rights.

11 **(2) The 2024 LIHTC Program is not Exempt from Guam Procurement Law**

12 GHURA focuses on the Legal Memorandum dated December 17, 2012 (Ref: AG-12-0850)
13 issued by the OAG for GHURA (“12/17/12 OAG Memo”) and argues that it “simply enumerates the
14 10 programs administered by GHURA that are federally funded.” See Agency Report at 4:11-28;
15 5:1-6. GHURA misconstrues the point of the 12/17/12 OAG Memo. It begins the analysis by
16 discussing the general rule governing Guam Procurement Law: “Guam Procurement Law applies to
17 ... (“GHURA”) except when requirements of federal law with respect to the expenditure of federal
18 law shall control. See 12 G.C.A. §5131.” Appeal, Exhibit B at 1 (Protest, Ex. 24 – OAG 12-0850,
19 12/17/12 Opinion). Citing to Title 24 CFR §85.36, it states that when procuring property or services
20 under a grant, a State (which includes territories) “will follow the same policies and procedures it
21 uses for procurement from its non-Federal funds.” *Id.* The LIHTC program is included in the list of
22 federal programs which fall is required to follow the procedures Guam uses for non-federal funds,
23 namely, the Guam Procurement Law. *Id.* at 3. The memorandum concludes with a “review of
24 GHURA’s programs and their regulations does not reveal or provide for a different procurement
25 process with federal funds” and confirms that GHURA is required to follow the Guam Procurement
26 Law unless a specific federal statute or regulation provides otherwise. *Id.* at 4.

27 GHURA has not provided any federal law or regulation stating that the LIHTC program is
28 exempt from Guam Procurement Law, because such law does not exist. GHURA raises the point that

1 it did not administer the 2024 LIHTC QAP based on Guam Procurement Law and does not believe it
2 has in previous LIHTC solicitations. It is irrelevant what it did in previous LIHTC procurements
3 because the LIHTC QAP for a particular year is only applicable for that year.

4 Lastly GHURA argues that the allocation of tax credits is not considered buying, purchasing,
5 renting, leasing, or otherwise acquiring any supplies, services, or construction by GHURA.” Agency
6 Report at 5:4-6. The LIHTC program solicits proposals from developers for granting federal tax
7 credits, which will be awarded to the successful proposer / developer team. The tax incentives
8 provide the developer with the ability to go to the market to raise funds to build or rehabilitate
9 affordable rental housing for low-income households in furtherance of GHURA’s mandate. This
10 request for services falls squarely within the ambit of the Guam Procurement Law.

11 **(3) Protest #1 Was Timely Filed**

12 GHURA makes a statement that “Summer Vista waited to file its First and Second Appeals
13 until after allocation of tax credit to Flora Rosa under the 2024 LIHTC QAP cycle.” GHURA
14 appears to be referring to Summer Vista’s Protest #1 and Protest #2. This Appeal involves the denial
15 of Protest #1. GHURA has not issues decisions in Protest #2 or Protest #3.

16 GHURA describes Summer Vista’s protests as untimely solely because Summer Vista waited
17 “until after allocation of tax credit to Flores Rosa under the 2024 LIHTC QAP cycle”. Agency Report
18 at 5. However, the timeliness of a protest is not contingent on whether it is filed before an award is
19 made. In fact, Guam Procurement Law explicitly allows for protests to be filed after an award and
20 provides specific remedies in such cases. *See* 5 GCA 5452. Instead, the controlling factor in
21 determining timeliness is what procurement protests must be “submitted in writing within fourteen
22 (14) days after such aggrieved person knows or should know of the facts giving rise thereto.” 5 GCA
23 5425(a); *See also DFS Guam L.P. v. A.B. Won Pat Int’l Airport Auth., Guam*, 2020 Guam 20, 70.

24 GHURA’s statement does not contain any legal arguments other than the conclusory
25 statement that Protest #1 was untimely, and that the OPA does not have jurisdiction. GHURA then
26 states that it will be filing a Motion to Dismiss in the future. There is nothing for Summer Vista to
27 respond to at this time on this issue.

28

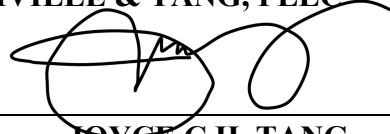
1 **IV. CONCLUSION**

2 For the foregoing reasons, Summer Vista respectfully request that the OPA order GHURA to
3 issue decisions for Protest #2 and #3 by March 13, 2025, order GHURA to comply the automatic
4 stay, and make a finding in favor of Summer Vista regarding the un rebutted issues. Summer Vista
5 requests a hearing on this Appeal.

6 **CIVILLE & TANG, PLLC**

7
8 Dated: March 6, 2025

By: _____



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Attorneys for Appellant

*Summer Vista DE II, LLC and Summer Vista DE
III, LLC*