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LOURDES A. LEON GUERRERO  
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Lt. Governor (Sigundo Maga'låhi)

AGENCY REPORT FOR OPA-PA-20-003 CONSOLIDATED INTO OPA-19-011

This Agency Report for OPA-PA-20-003 is submitted as outlined in 2 GAR Div.4, Section 12, Section 12012, and is the same as that of OPA-PA-19-011, and we refer to the Procurement Record in that filing.

A copy of the protest (Ref to Tab 2)

A copy of the bid or offer submitted by Appellant (Ref to Tab 4)

A copy of the Solicitation (Ref to Tab 6)

A copy of the Abstract (Ref to Tab 9)

A copy of any other document which are relevant:

GSA's response to protest:

As we stated in our response to the protest dated February 8, 2020:

5 GCA Section 5630(a)(b) defines what is a Gratuity and Kickback

(a)Gratuities. It shall be a breach of ethical standard for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity, or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or program standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling , determination, claim or controversy, or other particular matter, pertaining to any program requirement, or a contract or a subcontract; or to any solicitation or proposal thereof.

(b)Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to a prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for an award of a subcontractor or order.

Clearly, the donation by SH Enterprises did not meet the definition of a gratuity or kickback. There was no decision or approval, disapproval recommendation, preparation of any part of the program requirement or a purchase request, influencing the content of this or any specification or program standard. Nor was there any advice, investigation, auditing or any other advisory capacity in this or any

Further in this case, the Governor, by separate statute, is authorized to accept donations.

5 GCA Section 22408, it states:

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TIME: 1:25 LIAM XCOM

The Governor is authorized to accept monetary donations, from any individuals or organizations, which shall be deposited in a separate fund by the Treasurer of Guam. Such donations shall upon authorization of the Governor, be used and expended in accordance with the terms and conditions upon which they were made. Nothing herein shall be constructed to prevent the Governor on behalf of the government of Guam from accepting donations of property from any individual or organization.

This statute allows the Governor of Guam to accept donations, provided it complies with the terms and conditions of it. That is what happened here.

It should be noted that GSA did not procure the building for use by the Governor's War Claims Processing Center. **That action was undertaken by the Governor's office. GSA did not have any knowledge or undertake any activity to acquire the use of this building. As such, there was no gratuities or kickback made.**

Whether an award was made after receipt of the protest.: Yes.

A statement indicating whether the matter is the subject of a court proceeding. No

  
CLAUDIA S. ACFALLE