



Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

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**RE: Appeal of Basil Food Industrial Services Corporation, OPA-PA-19-011 and OPA-PA20-003**

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**Alice B. Mendoza** <amendoza@icclawgroup.com>

Tue, Aug 18, 2020 at 12:42 PM

To: "admin@guamopa.com" &lt;admin@guamopa.com&gt;, Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

Cc: "Geri E. Diaz" &lt;gdiaz@icclawgroup.com&gt;

Good afternoon,

I'm following up on the attached document sent for filing with regard to the above mentioned subject matter.

Sincerely,

Alice B. Mendoza

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**From:** Alice B. Mendoza**Sent:** Monday, August 17, 2020 4:44 PM**To:** 'admin@guamopa.com' <admin@guamopa.com>; 'Jerrick Hernandez' <jhernandez@guamopa.com>**Cc:** Geri E. Diaz <gdiaz@icclawgroup.com>**Subject:** Appeal of Basil Food Industrial Services Corporation, OPA-PA-19-011 and OPA-PA20-003

Hafa Adai,

Attached, please find *Basil Food Industrial Services Corporation's Remedies Brief* for filing in regards to the above mentioned subject matter.

Should you have any questions, please feel free to contact our office. Thank you.

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**Basil Food Industrial Services Corporation's Remedies Brief.pdf**

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Attorney for Appellant

BASIL FOOD INDUSTRIAL SERVICES CORPORATION

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

BASIL FOOD INDUSTRIAL SERVICES  
CORPORATION,

Appellant.

Appeal No. OPA-PA-19-011

Appeal No. OPA-PA-20-003

CONSOLIDATED

**BASIL FOOD INDUSTRIAL SERVICES  
CORPORATION'S REMEDIES BRIEF**

COMES NOW Appellant Basil Foods Industrial Services Corporation ("Basil"), by and through its undersigned counsel, with its Remedies Brief.

**I. The Government's GSA-056-19 Contract with SH Enterprises Should Be Terminated**

The evidence clearly demonstrates that SH Enterprises was not a responsive or responsible bidder and that there was a violation of Guam's Procurement Law, which requires that a contract be awarded to the lowest responsible bidder. Thus, the sole remedy for the unlawful procurement and award is the immediate termination and reissuance of the contract for food services for our manamko. Termination is authorized under 5 GCA § 5452(a), which states that termination is appropriate regardless of whether the awardee has acted fraudulently or in bad faith. Accordingly,

the award to SH Enterprises should be terminated and the Government must be required to issue a procurement for a new contract.

## **II. SH Enterprises Should Be Debarred Or Suspended and the GSA-056-19 Contract Should Be Terminated**

In considering possible remedies for this case, even if the OPA finds that SH Enterprises was a responsive and responsible bidder, there is a more exigent circumstance that must be considered resulting from SH Enterprises' violation of the ethical rules proclaimed in Guam's Procurement Laws and Regulations, and which are set forth as part of the terms and conditions of GSA-056-19. In this case, on January 22, 2020, SH Enterprises violated Guam Procurement Law's ethical standards when it provided a favor of approximately 5,000 square feet of commercial space within the Hakubotan building, to include utilities, and access to the parking lot, to the Government of Guam for use as the War Claims Processing Center. It is noteworthy that this significantly more-than-nominal favor was provided by SH Enterprises during three critical and impressionable events occurring during the procurement process, and it causes immediate concern because its action explicitly and strictly violated the policies and purpose of the procurement laws as stated in 5 GCA § 5001<sup>1</sup>. First, the favor occurred just two and a half (2 ½) months after SH Enterprises was awarded the multi-million dollar GSA-056-19 contract to provide food services to our

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<sup>1</sup> 5 GCA § 5001. Purposes, Rules of Construction.

(a) Interpretation. This Chapter shall be construed and applied to promote its underlying purposes and policies.

(b) Purposes and Policies. The underlying purposes and policies of this Chapter are:

- (1) to simplify, clarify, and modernize the law governing procurement by this Territory;
- (2) to permit the continued development of procurement policies and practices;
- (3) to provide for increased public confidence in the procedures followed in public procurement;
- (4) to ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory;
- (5) to provide increased economy in territorial activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Territory;
- (6) to foster effective broad-based competition within the free enterprise system;
- (7) to provide safeguards for the maintenance of a procurement system of quality and integrity; and
- (8) to require public access to all aspects of procurement consistent with the sealed bid procedure and the integrity of the procurement process. Emphasis added.

manamko; second, Basil's appeal of the award of GSA-056-19 to SH Enterprises was still pending before the Office of Public Accountability and had not yet resolved; and lastly, the favor occurred twenty-six (26) days before SH Enterprises was awarded yet another multi-million dollar contract, namely, GSA-001-20, for food services for DOC Inmates and Detainees.

The remedies for this type of violation are governed by 5 GCA § 5651. Section 5651 provides as follows:

§ 5651. Civil and Administrative Remedies Against Non Employees Who Breach Ethical Standards.

(a) Existing Remedies Not Impaired. Civil and administrative remedies against non- employees which are in existence on the effective date of this Chapter shall not be impaired.

(b) Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of this Chapter or regulations promulgated hereunder, the Procurement Policy Office, in connection with non-employees, may impose any one or more of the following:

- (1) written warnings or reprimands;
- (2) termination of transactions; and
- (3) debarment or suspension from being a contractor or subcontractor under territorial contracts.

(c) Right to Recover from Non-Employee Value Transferred in Breach of Ethical Standards. The value of anything transferred in breach of the ethical standards of this Chapter or regulations promulgated hereunder by a nonemployee shall be recoverable by the Territory as provided in § 5652 of this Chapter.

(d) Right of the Territory to Debar or Suspend. Debarment or suspension may be imposed by the Procurement Policy Office in accordance with the procedures set forth in § 5426 of this Chapter for breach of the ethical standards of this Chapter, provided that such action may not be taken without the concurrence of the Attorney General.

(e) Due Process. All procedures under this Section shall be in accordance with the Administrative Adjudication Law.

5 GCA § 5651.

The remedy for SH Enterprises' ethical breach is premised upon 5 GCA § 5651(b), and based on the environment in which the favor was provided to the Government of Guam, wherein SH Enterprises was awarded not one but two multi-million dollar contracts and there was an ongoing and unresolved procurement appeal, the penalty must match the level of the breach. Here,

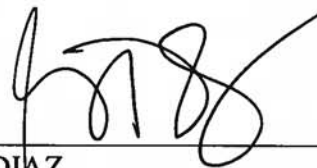
SH Enterprises' violation of the Procurement law's ethical standards is so serious and calls into question its responsibility to maintain the very ethical standards it attested to abide by when awarded the contract. A violation of any ethical rules goes to the heart of the public trust, which is woven into the fabric of our procurement rules and regulations. Accordingly, termination of the GSA-056-19 contract and the debarment or suspension of SH Enterprises are the only appropriate remedies for this ethical violation.

### III. CONCLUSION

Basil thanks the OPA for its consideration of these issues.

DATED: Hagåtña, GU, August 17, 2020.

CAMACHO CALVO LAW GROUP LLC



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CORPORATION