

OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

PROCUREMENT APPEALS

IN THE APPEAL OF,

APPEAL NO: OPA-PA-13-006

DFS GUAM L.P.

**ORDER DENYING DFS' REQUEST TO
LIFT STAY**

Appellant

To: Purchasing Agency:

A.B. Won Pat International Airport, Government of Guam
C/O Michael A. Pangelinan, Esq.
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Hagatna, Guam 96910
Facsimile: (671) 646-9403

Appellant:

DFS Guam, L.P.
C/O Maurice M. Suh, Esq.
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AND

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AND

C/O Maurice M. Suh
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Facsimile: (671) 477-2511

Order - 1

1 **Interested Party:**

2 Lotte Duty Free Guam, LLC
3 C/O Cesar C. Cabot
4 Edge Building, Second Floor
5 929 South Marine Corps Drive
6 Tamuning, Guam 96913
7 Facsimile: (671) 646-0777

8 THIS MATTER came before the Public Auditor on November 22, 2013, pursuant to DFS
9 Guam L.P.'s ("DFS") Request to Lift Stay. DFS argues that although *DFS Guam L.P. v. The*
10 *A.B. Won Pat International Airport Authority, Guam, Lotte Duty Free Guam LLC, et. al.*,
11 CV0685-13 has been appealed to the Supreme Court of Guam, the Public Auditor can still lift
12 the stay earlier ordered because the Superior Court of Guam did not issue any rulings regarding
13 the merits of DFS' appeal and that only ancillary matters (sanctions and clerical errors) have
14 been raised on appeal, which have nothing to do with the merits of DFS' protests. The Guam
15 International Airport Authority ("GIAA") and Lotte Duty Free Guam LLC ("Lotte") oppose the
16 Request. The Public Auditor FINDS and ORDERS the following:

17 On May 30, 2013, DFS filed a Notice of Appeal with the Office of Public Accountability
18 ("OPA") in OPA-PA-13-006. The Appeal pertained to GIAA-010-FY12. DFS appealed
19 "GIAA's...decision of May 17, 2013 to deny DFS' proposal protest...of the GIAA's conduct in
20 connection with its April 12, 2013 decision to approve the recommendations of the GIAA
21 evaluation committee ranking Lotte Duty Free Guam LLC and its relevant subsidiaries...as the
22 'most qualified proposer' pursuant to RFP No. GIAA 010-FY12..."

23 On May 31, 2013, DFS filed a Notice of Pending Action with the OPA pursuant to 2
24 G.A.R. § 12103(b). The Notice advised that DFS filed an action in the Superior Court of Guam
25 in *DFS Guam L.P. v. The A.B. Won Pat International Airport Authority, Guam, Lotte Duty Free*
26 *Guam LLC, et. al.*, CV0685-13 (the "Action"). The Notice requested that the OPA "immediately
27 stay any and all further proceedings on this administrative appeal..."

28 On June 5, 2013, the Public Auditor issued an Order Staying Appellant's Appeal finding
that DFS' Superior Court Action "...concerns the procurement underlying this appeal. Thus, the

1 parties are hereby ON NOTICE of the aforementioned civil action and the Public Auditor shall
2 not take any further action on this appeal and hereby declines taking any further action due to the
3 aforementioned judicial involvement. The Public Auditor must now stay the appeal without
4 taking any further action until the Superior Court of Guam decides *DFS Guam L.P. v. The A.B.*
5 *Won Pat International Airport Authority, Guam, Lotte Duty Free Guam LLC, et. al.*, CV0685-13
6 (Superior Court of Guam)” [Order, 2:25-3:5].

7 On July 19, 2013, Judge Michael J. Bordallo issued a Decision and Order in that Action.
8 Defendants filed motions asking the Court to reconsider or correct certain portions of the
9 Decision and Order. On October 10, 2013, Judge Bordallo issued an Amended Decision and
10 Order dismissing Plaintiff’s action without prejudice. On November 8, 2013 and on November
11 12, 2013, Lotte and GIAA respectively filed notices of appeal, appealing the October 10, 2013
12 Decision and Order. On November 14, 2013, Judge Bordallo issued a Second Amended Decision
13 and Order. GIAA and Lotte’s appeals are currently pending before the Supreme Court of Guam.

14 The appeals arise from *DFS Guam L.P. v. The A.B. Won Pat International Airport*
15 *Authority, Guam, Lotte Duty Free Guam LLC, et. al.*, CV0685-13. That Action (CV0685-13)
16 concerns the procurement underlying the OPA Appeal. Pursuant to 2 G.A.R. § 12103(b), if an
17 action concerning the procurement under appeal has commenced in court, the Public Auditor
18 shall not act on the Appeal except to notify the parties and decline the matter due to judicial
19 involvement.

20 Pursuant to 2 G.A.R. § 12103(b) the parties were required to notify and provide copies to
21 the Public Auditor within 24 hours of any action in court concerning the procurement under
22 Appeal. The parties were required to advise the Public Auditor of the pendency of GIAA and
23 Lotte’s appeals within 24 hours of filing. The appellants failed to provide such notice to the
24 Public Auditor. Nonetheless, the Public Auditor is aware that the appeals remain before the
25 Supreme Court of Guam.

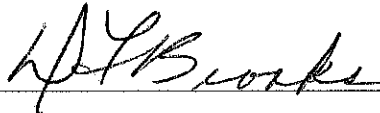
26 Guam’s courts are a unified entity and the Supreme Court of Guam is “the highest court
27 of the judicial branch of Guam (excluding the District Court of Guam).” 48 U.S.C.A. § 1424-
28 1(a). See also 7 G.C.A. § 1100.01. The Supreme Court has “jurisdiction to hear appeals over

1 any cause in Guam decided by the Superior Court of Guam or other courts established under the
2 laws of Guam.” 48 U.S.C.A. § 1424-1(a)(2). Its jurisdictional sweep is broad, commencing with
3 its “authority to review al justiciable controversies and proceedings, regardless of subject matter
4 or amount involved.” 7 G.C.A. § 3107(a).

5 While the appeal of a decision of the Public Auditor must be to the Superior Court as
6 provided by 5 G.C.A. § 5707, the Public Auditor must recognize that such an appeal is not
7 necessarily conclusive; an aggrieved party still has the ability to proceed to the Supreme Court in
8 accordance with 48 U.S.C.A. § 1424-1(a)(2) and subject to applicable Guam statutes and rules.
9 It was with such realization in mind, that the rules pertaining to procurement appeals provide at 2
10 G.A.R. § 12103(b) that “[i]f an action concerning the procurement under Appeal has been
11 commenced in court the Public Auditor shall not act on the Appeal except to notify the parties
12 and decline the matter due to Judicial involvement.” [Emphasis added.]

13 Accordingly, the Public Auditor finds that OPA-PA-13-006 is still “in court” and as a
14 result, the Public Auditor is precluded by its rules from proceeding at this time with the DFS
15 appeal. The DFS request is thus DENIED.

16
17 **SO ORDERED** this 26th day of December, 2013.

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20 _____
21 DORIS FLORES BROOKS, CPA, CGFM
22 PUBLIC AUDITOR
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FAX

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	DFS Guam, L.P. C/O William J. Blair, Esq. Blair Sterling Johnson & Martinez, PC Fax: 472-4290 C/O Maurice M. Suh, Esq. Gibson, Dunn & Crutcher, LLP VIA E-Mail C/O Joyce C.H. Tang Civille & Tang, PLLC Fax: 477-2511	Pages:	5 (including cover page)
	Lotte Duty Free Guam, LLC C/O Cesar C. Cabot Cabot Mantanona, LLP Fax: 646-0777	Date:	December 26, 2013
		Phone: Fax:	475-0390 x. 206 472-7951

Re: OPA-PA-13-006 Order Denying DFS' Request to Lift Stay

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Thank you,
 Rachel Field, Auditor
 rfield@guamopa.org

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