



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

February 23, 2015

Charles H. Ada II
Executive Director
A.B. Won Pat International Airport Authority
355 Chalan Pasajeros
Tamuning, Guam 96911

VIA FACSIMILE: (671) 646-8823

Re: Notice of Receipt of Appeal – OPA-PA-15-002

Dear Mr. Ada,

Please be advised that DFS Guam, L.P. filed an appeal with the Office of Public Accountability (OPA) on February 20, 2015 regarding the A.B. Won Pat International Authority (GIAA) procurement actions related to GIAA RFP No. GIAA-010-FY12 Specialty Retail Concession. OPA has assigned this appeal case number OPA-PA-15-002.

Immediate action is required of GIAA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at www.opaguam.org. The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

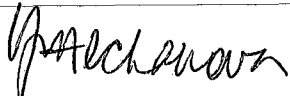
Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Tuesday, March 3, 2015**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for the procurement solicitation above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Tuesday, March 10, 2015**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to DFS Guam, L.P. OPA respectfully asks that GIAA provide

one original and two copies of the procurement record as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Yuka Hechanova at 475-0390 ext. 210, or yhechanova@guamopa.org, should you have any questions regarding this notice.

Sincerely,



Yuka Hechanova, CPA, CIA, CGFM, CGAP, CGMA
Deputy Public Auditor

Enclosure: First Three Pages of Notice of Appeal – OPA-PA-15-002

Cc: G. Patrick Civile, Attorney for DFS Guam, L.P.
Joyce C.H. Tang, Attorney for DFS Guam, L.P.
Maurice M. Suh, Attorney for DFS Guam, L.P.
Jay P. Srinivasan, Attorney for DFS Guam, L.P.

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10 ATTORNEYS FOR APPELLANT DFS GUAM, L.P.

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 2/20/2015

TIME: 3:45 AM PM BY: M.B.

FILE NO OPA-PA: 15-002

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

14
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16 In the Appeal of
17
18 DFS Guam L.P., Appellant, of the Decision of
19 the A.B. Won Pat International Airport
20 Authority, Guam, Respondent.

DOCKET NO. OPA-PA-15 - 002
NOTICE OF PROCUREMENT APPEAL;
PROCUREMENT APPEAL; AND
VERIFICATION

1 DFS Guam L.P. (“DFS”) hereby appeals a decision rendered by the A.B. Won Pat
2 International Airport Authority, Guam (“GIAA”), an agency of the Government of Guam, on
3 February 5, 2015, denying DFS’s June 7, 2013 protest of GIAA’s RFP No. GIAA 010-FY12 (“RFP”)
4 “to develop, construct, and operate a high quality specialty retail concession at the [Airport’s] Main
5 Passenger Terminal” (the “Airport Concession”). This appeal concerns DFS’s third protest of the
6 RFP; GIAA’s denial of DFS’s first protest was appealed on May 30, 2013 under Docket No. OPA-
7 PA 13-006, and was dismissed on September 30, 2014 when the Public Auditor recused herself from
8 hearing the matter after GIAA and Real-Party-in-Interest Lotte Duty Free Guam LLP (“Lotte”)
9 alleged that she was biased. Similarly, DFS’s second protest was appealed on January 21, 2015
10 under Docket No. OPA-PA-15-001, and was dismissed on January 23, 2015 when the Public Auditor
11 again recused herself. The bases for DFS’s third protest, which are set forth fully herein, are distinct
12 from the bases for DFS’s first and second protests.

13 **I. APPELLANT’S INFORMATION**

14 Name: DFS Guam L.P.
15 Mailing Address: 1296 Pale San Vitores Road
16 Tumon, Guam 96913
17 Business Address: 1296 Pale San Vitores Road
18 Tumon, Guam 96913

19 For purposes of this appeal, please direct correspondence to DFS’s counsel, G. Patrick Civile,
20 Esq. (pciville@civilletang.com), Civile & Tang, PLLC, 330 Hernan Corrtex Ave. Ste. 200, Hagatna,
21 Guam 96910.

22 **II. SOLICITATION INFORMATION**

23 Identification of Procurement/Solicitation: RFP No. GIAA 010-FY12
24 Procuring/Soliciting Agency: A.B. Won Pat International Airport Authority, Guam
25 Contract Number: No Contract Number is shown on the purported contract
26 Date of Contract: June 12, 2013 (but this purported contract was void *ab*
27 *initio* for reasons set forth below and in DFS’s other
28 protests)

1
2
3 Names of Competing Bidders:

- 4 1. Lotte Duty Free Guam, LLC (bidder to which GIAA purported to award the contract)
- 5 2. The Shilla Duty Free
- 6 3. James Richardson (Guam), LLC

7 The decision being appealed, included in the Supporting Documents attached hereto, was
8 made on February 5, 2015, by Charles H. Ada II, Executive Manager of GIAA and head of the
9 relevant purchasing agency.

10 III. NOTICE OF APPEAL

11 DFS brings this appeal of GIAA's February 5, 2015 decision to deny DFS's third proposal
12 protest ("Protest No. 3") regarding GIAA's conduct in connection with its administration of the RFP
13 and its related decision to approve the recommendations of GIAA's evaluation committee ranking
14 Lotte and its relevant subsidiaries and affiliates as the "most qualified proposer" pursuant to the RFP.

15 DFS initiated its Protest No. 3 on June 7, 2013, by sending a letter to GIAA indicating that
16 DFS had learned of misconduct beyond what it identified in its first and second procurement protests
17 ("Protest No. 1 and No. 2") based on GIAA's June 3, 2013 response to DFS's May 24, 2013
18 Sunshine Act request—seeking, *inter alia*, information regarding the criteria the GIAA adopted as
19 required by 12 GCA § 1203.1(a)(ii)—that GIAA had "found no documents responsive to this
20 request." GIAA's response that it had no responsive documents made clear that GIAA had violated
21 or ignored 12 GCA § 1203.1, which required GIAA to adopt operational criteria for an airport
22 concession and then conform any procurement relating to any airport concession to these criteria.
23 Relatedly, the lack of the criteria mandated by 12 GCA § 1203.1 also shows that GIAA had no fair
24 and objective criteria to evaluate the competing procurement proposals submitted in response to the
25 RFP. DFS's Protest No. 3 is focused on these critical failures by GIAA.

26 On February 5, 2015, GIAA notified DFS that its Protest No. 3 had been denied. DFS now
27 brings this timely appeal of that decision pursuant to 5 G.C.A. § 5425(e) within the 15-day statutory
28 period for appeal.

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Charles H. Ada II Executive Director A.B. Won Pat International Airport	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Fax:	(671) 646-8823	Pages:	6 (including cover page)
CC:	G. Patrick Civile, Esq. Joyce C.H. Tang, Esq. Attorneys for DFS Guam, L.P. Phone: (671) 472-8868/69 Fax: (671) 477-2511	Date:	February 23, 2015
	Maurice M. Suh, Esq. Jay P. Srinivasan, Esq. Attorneys for DFS Guam, L.P. Phone: (213) 229-7000 Fax: (213) 229-7520	Phone: Fax:	475-0390 x. 210 472-7951

Re: OPA-PA-15-002 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

See attached for reference. Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,

Yuka Hechanova

Deputy Public Auditor

yhechanova@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.