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 OFFICE OF PUBLIC ACCOUNTABILITY  
 PROCUREMENT APPEALS

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Attorneys for Appellant  
 G4S Security Systems (Guam) Inc.

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

**PROCUREMENT APPEAL**

In the Appeal of	)	Docket No. OPA-PA-13-013
	)	
G4S SECURITY SYSTEMS (GUAM) INC.	)	<b>RESPONSE TO INTERESTED</b>
	)	<b>PARTY'S NOTICE OF JUDICIAL</b>
Appellant.	)	<b>PROCEEDING</b>
_____	)	

On November 25, 2013, interested party Orion Construction Corporation (Guam) (“Orion”) gave notice of a judicial proceeding purportedly concerning the procurement at issue in this appeal. Orion’s notice is based on a bizarre and erroneous interpretation of 2 GAR Div. 4 §12103(b). There is no judicial proceeding concerning IFB 032-2013 that would operate to divest the OPA of its jurisdiction in this matter.

Section 12103(b) provides in pertinent part, “If an action *concerning the procurement under Appeal* has commenced in court, the Public Auditor shall not act on the Appeal except to notify the parties and decline the matter due to Judicial involvement.” (Emphasis added.) The procurement under appeal, IFB 032-2013, is **not** the subject of any pending judicial proceeding. Orion does not even allege that it is. Instead, Orion contends, without documentation, that an issue in the current

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appeal is also being litigated in an unrelated matter concerning a wholly separate procurement and different parties, Xerox Corp. v. The Office of Public Accountability, Guam S. Ct. CVA 13-018.

The plain language of 2 GAR Div. 4 §12103(b) has been construed as divesting the OPA of jurisdiction when the specific procurement that is the subject of an OPA appeal is also the subject of a court proceeding. See In the Appeal of DFS Guam L.P., Guam OPA Appeal No. OPA-PA-13-006, Order Staying Appellant's Appeal at p. 2 (June 5, 2013). Orion is now suggesting that section 12103(b) should be construed as divesting the OPA of jurisdiction over an appeal whenever there is a case pending in a court involving a separate, unrelated procurement that may involve similar legal issues. This could include not only cases in the Superior Court of Guam and the Supreme Court of Guam, but also possibly cases in the United States District Court of Guam, the United States Ninth Circuit Court of Appeals, and the United States Supreme Court. Since there will probably always be some case on one or more of these court's dockets involving issues in some way similar to any pending OPA appeal, in effect Orion is seeking to deprive the OPA of its ability to hear almost any procurement appeal.

There is also reason for concern about Orion's position that the OPA cannot terminate contracts awarded in flagrant violation of the procurement stay. This current case is not an isolated incident. In recent months there has been a chronic problem with agencies routinely flouting the law by awarding contracts in plain and open violation of the procurement stay. See, e.g., In the Appeal of G4S Security Systems (Guam) Inc., OPA-PA-013 (D & O, Nov. 12, 2013); In the Appeal of JMI Edison, OPA-PA-13-009 (Decision, Nov. 4, 2013); In the Appeal of K Cleaning Services,

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OPA-PA-13-004 at p. 7 (Decision, Oct. 28, 2013); In re Appeal of JMI Edison, OPA-PA-13-010 (Order, Sept. 20, 2013). Orion is seeking to reopen the door to such illegal conduct.

To the extent that 2 GAR Div. 4 §12103(b) might very arguably be open to the strained construction proffered by Orion, this issue can be resolved by standard rules of statutory construction. Statutes and regulations should not be construed in an absurd manner inconsistent with their intent and purpose. *See, e.g., Villalon v. Hawaiian Rock Products, Inc.*, 2001 Guam 5, ¶24. The reference to “an action concerning the procurement under Appeal” in section 12103(b) should not be construed as depriving the OPA of the power to act just because there is a pending court case involving a wholly unrelated procurement but some similar issue. Section 12103(b) should logically be limited to court actions involving the same procurement that is the subject of the OPA appeal.

Dated this 25 day of November, 2013.

Respectfully submitted,

DOOLEY ROBERTS & FOWLER LLP

By:   
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