

# CIVILLE & TANG, PLLC

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May 13, 2016

## VIA HAND DELIVERY

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**LAW OFFICE OF PETER C. PEREZ**  
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**Re: TLK Marketing Procurement Appeal- Guam Visitor's Bureau  
OPA Case No: OPA-PA 16-003**

Dear Madame Public Auditor and Mr. Perez:

I am writing on behalf of TLK Marketing ("TLK") the Appellant. As you are aware, this appeal centers on the Guam Visitors Bureau's ("GVB") selection of a new marketing representative in Korea. This contract involves numerous time-sensitive projects, including one in late May to film a popular Korean comedy television program here on Guam.

TLK timely filed a protest of the selection of HIC, INC. ("HIC") for award under the RFP, invoking an automatic stay pursuant to 5 GCA §5425(g). GVB has taken the position that it can move forward with contract performance with selectee HIC in violation of the automatic stay. On May 6, 2016, TLK submitted a motion to the OPA to confirm the automatic stay. The issues presented by the motion—the ability of an agency to circumvent the statutory stay, the lack of agency approval allowing a contract award, and the power of the OPA to meaningfully address protest appeals—are important and will help bring clarity to Guam procurement law.

GVB's contention that the stay is not in place carries with it an escalation of financial damage to the territory if GVB is in fact wrong. If you determine that the automatic stay has indeed been in effect upon the filing of TLK's protest, then the putative contract entered into between GVB and HIC on March 14, 2016 was entered into in violation of law, and is void *ab initio*. GVB and HIC cannot proceed with the contract until final resolution of the appeal. GVB's refusal to recognize the stay exposes the Territory to potential breach of contract claims from HIC. The longer GVB refuses to recognize the automatic stay and remains in an unlawful contract, the greater the

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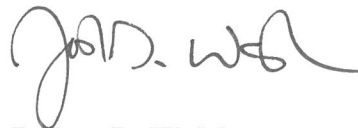
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potential damages and exposure for the Territory.

I appreciate that the Public Auditor has moved quickly on this protest and set a Pre-Hearing Conference for May 24<sup>th</sup>. I respectfully request the Motion to Confirm Automatic Stay be heard at the Pre-Hearing Conference. GVB's position on the stay has been explained in its Agency Report of May 9, 2016, and the essential facts exist in the procurement record to allow for the OPA to meaningfully engage with the issue of the stay. Each day the contract with HIC continues, HIC becomes more entrenched with GVB operations, and any meaningful remedy available to TLK diminishes.

TLK looks forward to being able to present its arguments.

Sincerely,

A handwritten signature in black ink, appearing to read "J.D. Walsh", written in a cursive style.

**Joshua D. Walsh**

CC: Via Hand Delivery:  
*Tom J. Fisher, Esq. – Fisher & Associates*