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FILE NO OPA-PA: 16-006, 16-008

**IN THE OFFICE
OF PUBLIC ACCOUNTABILITY**

In the Appeal of

BASIL FOOD INDUSTRIAL SERVICES
CORPORATION,

Appellant.

**DOCKET NO. OPA-PA-16-006
OPA-PA-16-008**

**OPPOSITION TO MOTION TO STRIKE
APPEARANCE OF SH ENTERPRISES**

On July 1, 2016, SH Enterprises entered its appearance in OPA Appeals OPA-PA-16-006 (“First Appeal”) and OPA-PA-008 (“Second Appeal”). *See, Notices of Entry of Appearance filed 7/1/2016.* Subsequently, the Public Auditor consolidated the two appeals. *See, Order After Hearing, filed 7/7/16.* Basil Food Industrial Services Corporation (“Basil”) objected to SH Enterprises’ entering into OPA-PA-16-006, and filed a *Motion to Strike the Appearance of SH Enterprises* (“Motion to Strike”) in the First Appeal.

The Motion to Strike should be denied because SH Enterprises is an interested party, and because the Public Auditor has consolidated the two appeals.

A. SH Enterprises Is an Interested Party.

The Motion to Strike rests on the argument that the First Appeal involves a contract

dispute between Basil and the Government and not a procurement award; therefore, the Basil contends the only parties which have an interest in the dispute are the Government of Guam and its contractor, Basil. *See 7/11/16 Motion to Strike* at 3. Basil relies on 5 G.C.A. §5427(a) for the proposition that contract disputes cannot involve an interested party e.g., parties in privity, therefore, SH Enterprises cannot participate as an interested party. 5 G.C.A. §5427(a) states as follows:

(a) Applicability. This Section applies to controversies between the Territory and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

5 G.C.A. §5427(a). Nothing in §5427(a) or the procurement law restricts SH Enterprises, an interested party, from entering an appearance in this appeal.

SH Enterprises indisputably is an interested party because the relief sought by Basil in the First Appeal is for the Government to rescind its termination of Basil's contract, and to allow Basil to complete the remaining term of the contract, with a contract extension. SH Enterprises was awarded the contract to provide "Nutrition Services for the Comprehensive Management, Operations & Maintenance of the Elderly Nutrition Program" under the emergency procurement provisions set forth in 5 GCA §5216, replacing Basil.

Because SH Enterprises is the replacement vendor, and the relief sought depending on the outcome of this appeal may affect SH Enterprises, SH Enterprises has standing to participate in this proceeding.

SH Enterprises should be permitted to remain an interested party in the consolidated appeal, including for matters relating to the First Appeal. The distinction between Basil's contract dispute and its protest of the emergency award is not as clear-cut as Basil contends

in its Motion to Strike. In its Notice of Procurement Appeal for the First Appeal, Basil accuses SH Enterprises of “underhanded activity...with respect to the emergency procurement.” *See 6/07/16 Notice of Procurement Appeal* at 4. Basil also claims that it “has received evidence that SH Enterprises is not complying with health regulations in the transport of ENP food.” *Id.* at 5.

Basil renews its accusations against SH Enterprises in its Comments to GSA’s Agency Report, claiming that SH Enterprises benefited from favoritism, that SH Enterprises had inside information and knew Basil would be “shut down” prior to Basil’s inspection, and that DPHSS “put its clients’ health at risk” by contracting SH Enterprises. *See Comments to Agency Report*, filed 7/5/16 at 7-9. These allegations are false and SH Enterprises should be permitted as an interested party to refute these unfounded allegations. In consolidating OPA-PA-16-006 and OPA-PA-16-008, the Hearing Officer recognized that the two appeals “concern the identical parties and similar issues.” *Order After Hearing*, filed 7/7/16 at 2. It is for precisely this reason that SH Enterprises should be permitted to remain as an interested party in both appeals. To force SH Enterprises out of one of the consolidated appeals would not only be impracticable, it would also deprive SH Enterprises of the right to respond to the false accusations made against it by Basil.

B. The Consolidation of the First Appeal and Second Appeal Moots This Issue.

The First Appeal and Second Appeal were consolidated on July 7, 2016. *See Order After Hearing*, filed 7/7/16. The Second Appeal involves an appeal of the emergency procurement in which SH Enterprises was awarded the contract. Basil’s Motion to Strike was directed to the First Appeal only. Even if SH Enterprises were not entitled to appear as an interested party in OPA-PA-16-006, which SH Enterprises disputes, it is undisputedly an

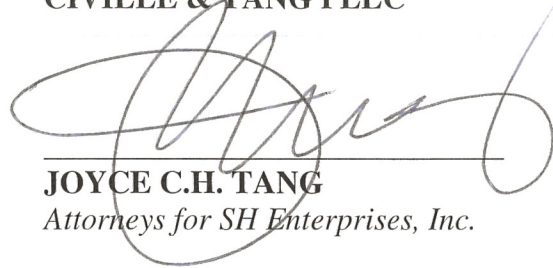
interested party in OPA-PA-16-008. Because the two appeals were consolidated, SH Enterprises has every right to participate in this consolidated Appeal.

CONCLUSION

For the foregoing reasons, SH Enterprises respectfully requests that Basil's Motion to Strike be denied.

Dated this 19th day of July, 2016.

CIVILLE & TANG PLLC

A handwritten signature in black ink, appearing to read "Joyce C.H. Tang", is written over a horizontal line. The signature is fluid and cursive.

JOYCE C.H. TANG

Attorneys for SH Enterprises, Inc.