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Attorneys for Appellant  
Guam Publications, Inc.

**RECEIVED**  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

JUN 16 2008  
TIME: 2:00 PM  
BY: A. Camacho  
FILE No. OPA-PA 08-007

OFFICE OF THE PUBLIC AUDITOR

GUAM

IN THE APPEAL OF  
GUAM PUBLICATIONS, INC.

Appellant.

APPEAL NO. OPA-PA-08-007

**APPELLANT'S OPPOSITION TO  
REQUEST FOR EXTENSION OF TIME  
TO FILE PROCUREMENT RECORD,  
AGENCY REPORT, AND TO ANSWER  
APPELLANT'S MOTION FOR  
DEFAULT JUDGMENT; EXHIBITS A  
AND B**

I. Introduction.

The expedient nature of the procurement appeal process mandates that the General Services Agency's ("GSA") Request for Extension of Time to File a Procurement Record, Agency Report, and to Answer Appellant's Motion for Default Judgment be denied in full. GSA has provided the OPA with absolutely no justification upon which to allow an extension of over *seven weeks* to file a procurement record and agency record, which under the Rules of Procedure for procurement appeals, must be filed within *days* of the receipt of the Notice of Appeal. The OPA should proceed to decide Appellant Guam Publications, Inc.'s (the publisher of the Pacific Daily News ("PDN")) Motion for Default Judgment. Should any extension be granted, as a

**ORIGINAL**

sanction for the blatant disregard of the OPA Rules of Procedure and the OPA's deadlines, GSA should be sanctioned in the amount of PDN's attorneys fees and costs in bringing its Motion for Default Judgment.

## II. Background.

On May 14, 2008, PDN filed its Notice of Procurement Appeal with the Office of the Public Auditor and served it on Claudia Acfalle, Chief Procurement Officer of General Services Agency. Ex. A.<sup>1</sup>

On May 15, 2008, the Office of the Public Auditor advised Ms. Acfalle that "Immediate action is required of your Office." Ex. B. In particular, GSA had "five working days following receipt of this notice of appeal" to provide the procurement record to the OPA. Section 12104(c)(3) of Title 2, Division 4, Chapter 12 of the Guam Administrative Rules and Regulations establishes that five-day deadline.

In addition, the OPA advised Ms. Acfalle that she was "responsible for giving notice to the Attorney General or other counsel for your agency." Ex. B. That duty is also mandated by the Rules and Regulations governing procurement appeals: "It shall be the duty of the Chief Procurement Officer . . . to give notice of the Appeal to the Attorney General or other counsel for the agency." 2 GAR Div. 4 § 12104(c)(1). Finally, the OPA instructed Ms. Acfalle to "[p]romptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your counsel." Ex. B.

The OPA's website also set forth a deadline of May 30, 2008 for GSA to file its agency report pursuant to 2 GAR Div. 4 §§ 12104(c)(3) and 12105. GSA failed to file either document, making this appeal uncontested. Accordingly, on June 6, 2008, PDN filed a Motion for Default

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<sup>1</sup> Exhibit A consists of the first page of the Notice of Appeal, showing that the document was stamp-received by GSA on May 14, 2008.

Judgment.

On June 12, 2008, the Office of the Attorney General entered its appearance and asked for an extension until July 12, 2008, to submit its procurement record. **July 12, 2008 is a Saturday.** The Attorney General, on behalf of GSA, based its request on grounds that it "has just recently received this case and requests time in order to review and assemble information as well as requesting time to meet with agency officials and to assist and/or review all documents and reports . . . ."

III. The Request Should Be Denied.

The goal of the Rules of Procedure is "the expeditious resolution of controversies in accordance with the requirements of 5 GCA Chapter 5 (Guam Procurement Law) and the Guam Procurement Regulations contained in 2 GAR Division 4." 2 GAR Div. 4 § 12101.

This goal is defeated when government agencies fail to take the Rules seriously, disregard deadlines imposed by the Rules and the OPA, and then ask for extensions of time that exceed the number of days allotted by the Rules and that fall on a weekend. In this case, GSA is already almost *four weeks* late in producing and filing the procurement record; the Rules provide GSA only *five working days* to submit such filing. 2 GAR Div. 4 § 12104(c)(3). GSA's request of an additional month to submit the procurement record exhibits a nonchalance of adhering to any of the deadlines in the Rules. The fact that GSA has asked for an extended due date which falls on a weekend demonstrates it failed to even consult a calendar.

Such blatant indolence should not be awarded with an extension of time to file the procurement record and agency report. What should also not be overlooked is the fact that GSA waited until *after* the deadlines had long expired in order to seek an extension. In the Superior Court of Guam, such dilatory conduct results in an automatic denial of a request for an extension. *See* GR 6.1. Moreover, in the Superior Court, if a request for an extension is made prior to a

deadline, the requesting party must demonstrate good cause. *See* CVR 16.5(b). GSA's justification for its request for the extension, particularly, its failure to promptly consult its counsel which was *required under the Rules* and mandated by the OPA's notice of the appeal, not only falls exceedingly short of the good cause standard, but is in actuality a slight of that standard.

The OPA should proceed to consider PDN's Motion for Default Judgment, submitted promptly after GSA failed to comply with any of the Rule-mandated and OPA-mandated deadlines. As the Rules state, the "failure of . . . any Interested Party to comply with the time limits stated in this section may result in resolution of the Appeal without consideration of the comments untimely filed." 2 GAR Div. 4 § 12104(c)(5). PDN respectfully requests that GSA's request for an extension of time be denied, and that default judgment be entered in favor of PDN.

Should the OPA allow any extension, however, it should only be within the confines of the deadlines set forth in the Rules for procurement appeals. In particular, GSA should only be granted five working days in order to produce the Procurement Record. Those five working days should not extend beyond June 19, 2008, five days after the Request for Extension of Time was filed. However, even this deadline would be generous given that the Attorney General apparently had notice of this case before June 12.

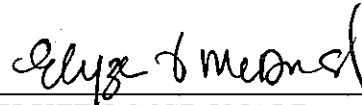
Finally, should the OPA allow any extension and allow this appeal to proceed to briefing, GSA should reimburse PDN for its attorneys fees and costs incurred in preparing its Motion for Default Judgment, the filing of which was prompted by GSA's inaction. Attorneys fees and costs incurred in preparing the motion amount to \$1,087.00.

#### IV. Conclusion.

For the foregoing reasons, the Request to extend the deadlines imposed by the OPA and the Rules of Procedure for procurement appeals should be denied.

DATED: Hagåtña, Guam, June 16, 2008.

CARLSMITH BALL LLP



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ELYZE J. MCDONALD  
Attorneys for Appellant  
Guam Publications, Inc.

# EXHIBIT

A

MC

MAY 14 2008

CARLSMITH BALL LLP

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RECEIVED  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

MAY 14 2008

TIME: 2:55pm  
BY: Elyze McDonald  
FILE No. OPA-PA ~~007~~-08-007

Attorneys for Appellant  
Guam Publications, Inc.

Received

Date 5/14/08  
Initial EJM  
PDN 3:20pm

OFFICE OF THE PUBLIC AUDITOR  
GUAM

IN THE APPEAL OF  
GUAM PUBLICATIONS, INC.

Appellant.

APPEAL NO. OPA-PA- ~~007~~<sup>2</sup>-08-007

PROCUREMENT APPEAL; EXHIBITS  
A-H; VERIFICATION

Guam Publications, Inc., the publisher of the Pacific Daily News (hereinafter referred to as "PDN") hereby appeals the decision rendered by the General Services Agency on May 1, 2008, denying PDN's protest of the award of Invitation for Bids for GSA-012-08.

1. PDN's address is P.O. Box DN, Hagatna, Guam 96932. However, for the purposes of this appeal, please direct correspondence to PDN's counsel Elyze McDonald, Esq., Carlsmith Ball LLP, Bank of Hawaii Bldg., Suite 401, 134 West Soledad Avenue, P.O. Box BF, Hagåtña, Guam 96932-5027.

2. This appeal pertains to General Services Agency Invitation for Bids No. GSA-012-08. The Bid was recommended for award to Marianas Variety. Ex. A. As of the date of this appeal, PDN does not know whether a contract has been issued to Marianas Variety.

COPY

# EXHIBIT

## B





May 15, 2008

OFFICE OF THE PUBLIC AUDITOR

Claudia S. Acfalle  
 Chief Procurement Officer  
 General Services Agency  
 Department of Administration  
 148 Route 1 Marine Drive  
 Piti, Guam 96915

VIA FACSIMILE 671-475-4217

Re: **Receipt of Notice of Appeal: Bid No. GSA-012-08 pertaining to advertisement notices for Election Notices Pursuant to Title 3 GCA & Publication of Board Meetings Pursuant to the Open Government Law**

Dear Ms. Acfalle:

Please be advised that Guam Publications Inc. through their attorney Elyze J. McDonald, Esq. has filed an appeal with the Office of the Public Auditor on May 14, 2008, of your protest decision on the above-stated procurement action. The appeal has been assigned Master File No. **OPA-PA-08-007**.

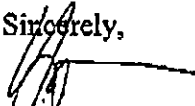
Immediate action is required of your office pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of Title 2 of the Guam Administrative Regulations. Copies of the rules, the appeal, and all filing deadlines are available at our office and on our website [www.guamopa.org](http://www.guamopa.org). The transmittal letter and the first page of the notice of appeal filed are enclosed for your reference.

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

Please submit one complete copy of the procurement record to OPA by May 22, 2008, five working days following receipt of this notice of appeal. When filing required documents with our office please provide an original and two copies for OPA and serve a copy to the Appellant's attorney, Elyze J. McDonald, Esq. at Carlsmith Ball LLP.

Thank you for your prompt attention to this matter. Please contact Theresa Gumataotao ext. 207 if you have any questions regarding this notice.

Sincerely,

  
 Doris Flores Brooks CPA, CGFM  
 Public Auditor

Enclosure: Transmittal Letter and First Page re Procurement Appeal; Exhibits A-H Verification - OPA-PA-08-007

cc: Ms. Elyze J. McDonald, Esq. - Attorney for Appellant (Via Facsimile - 477-4375)

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