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OFFICE OF THE PUBLIC AUDITOR

# Fax

**To:** Kevin J. Fowler, Esq. – Attorney for Appellant  
Anthony C. Perez, Esq.- Attorney for Appellee  
(GHURA)  
Janalynn Cruz-Damian, Esq.- Calvo & Clark LL  
P – Attorney for Interested Party (PCR)

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**Agency:** Office of the Attorney General, Guam      **Pages:** 4 (Including cover)

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**CC:** W. Nicholas Captain – Appellant      **Date:** Friday – 9/26/08

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**Fax:** 646-1223/ 477-5297/ 646-9403 / 472-1820      **Phone:** 646-1222 / 477-8064 / 646-9355 / 472-1819

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**Re:** OPA-PA-08-009: Order After Hearing on Purchasing Agency's Motion to Strike "Final Letter" of Appellant

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See letter attached and please acknowledge receipt by re-sending this cover page along with the firm or agency stamp, date, and initials of receiver. Thank you.

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 Theresa Gumataotao – 475-0390 x 207 [tgumataotao@guamopa.org](mailto:tgumataotao@guamopa.org)  
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1 Inc. (CHA), was present, and Appellant was represented by its Counsel of Record, Kevin J.  
2 Fowler, Esq. No representatives for GHURA were present, however, the GHURA was  
3 represented by its Counsel of Record, Anthony C. Perez, Esq. Tara N. Perez-Steffy of Interested  
4 Party PCR Environmental, Inc. (PCR), and said interested party was represented by its counsel  
5 of record, Janalyn Cruz Damian, Esq. The Hearing Officer, after hearing the arguments of the  
6 parties and considering the motion and responses thereto submitted for the hearing, hereby  
7 ORDERS the following:

8 1. The Appellant's Motion to Strike "Final Letter" of Appellant for Untimeliness is  
9 hereby DENIED on the following grounds:

10 a. The Hearing Officer finds that CHA's Letter filed with the OPA on  
11 September 8, 2008 and titled "Final Letter..." is actually CHA's Comment on GHURA's  
12 Agency Report because the contents of CHA's letter substantively comment on the contents of  
13 GHURA's agency report.

14 b. The Hearing Officer finds that CHA filed its Comments to GHURA's agency  
15 report eighteen (18) days after the deadline to do so had expired. Generally, an appellant's  
16 comments to the agency report shall be filed with the OPA within ten (10) days after the OPA's  
17 receipt of the Agency Report. 2 G.A.R., Div. 4, Chap, 12, §12104(c)(4). Here, the OPA  
18 received GHURA's Agency report on August 11, 2008 and the deadline to file the Appellants  
19 comments to the agency report expired on August 21, 2008. CHA filed its Comments to the  
20 Agency Report on September 8, 2008, which is eighteen (18) days after the August 21, 2008  
21 deadline.

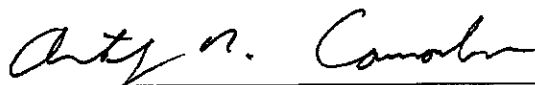
22 c. The Hearing Officer finds that CHA's late filing is excusable error because  
23 CHA was appearing *Pro Se* in this matter until September 26, 2008, when their present counsel  
24 entered his appearance in these proceedings and there is no evidence that CHA willfully  
25 disobeyed the regulations governing procurement appeal procedures. Generally, an appellant's  
26  
27  
28

1 failure to file comments on an agency report may result in a resolution of the appeal without  
2 consideration of the comments untimely filed. 2 G.A.R., Div. 4, Chap, 12, §12104(c)(5). Here,  
3 striking CHA's untimely Comments on GHURA's Agency Report is not justified because, at the  
4 time the comments were due, CHA was not represented by counsel and was appearing in this  
5 proceeding *Pro Se*.

7 2. CHA's Comments to GHURA's Agency Report shall be accepted as part of the record  
8 in this matter.

9 3. Pursuant to 2 G.A.R., Div. 4, Chap, 12, §12104(c)(4), any rebuttal to CHA's  
10 Comments GHURA may care to make shall be filed with the OPA within five (5) working days  
11 of the date of this Order, and said time period shall expire at 5:00 p.m. on Friday, October 3,  
12 2008.

14 **SO ORDERED** this 26<sup>th</sup> day of September, 2008 by:

18   
19 ANTHONY R. CAMACHO, ESQ.  
20 Hearing Officer