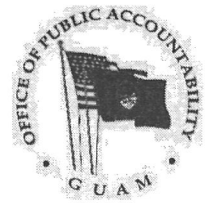


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<b>To:</b>	<b>Ms. Claudia S. Acfalle</b> <b>Chief Procurement Officer</b> General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	<b>From:</b>	<b>Doris Flores Brooks</b> <b>Guam Public Auditor</b> Office of Public Accountability
	<b>Mr. Nicolas Toft</b> <b>Assistant Attorney General</b> Office of the Attorney General of Guam 590 S. Marine Corps Drive, Suite 706 Tamuning, Guam, 96913 Fax: (671) 472-2493	<b>Pages:</b>	4 (including cover page)
<b>CC:</b>	<b>Elyze Iriarte, Esq.</b> (Attorney for Appellant Basil) Iriarte Camacho Calvo Law Group LLC 334 W Soledad Ave., Suite 401 Hagatna, Guam 96910 Phone: (671) 472-6813 Fax: (671) 477-4375	<b>Date:</b>	August 10, 2016
	<b>Joyce C.H. Tang, Esq.</b> (Attorney for Interested Party SH Enterprises, Inc.) Civile & Tang, PLLC 330 Hernan Cortez Avenue Suite 200 Hagatna, Guam 96910 Phone: (671) 472-8868/9 Fax: (671) 477-2511	<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 208 (671) 472-7951

**Re:** OPA-PA-16-006 and 16-008 Decision & Order RE Appellant's Motion to Strike Appearance of SH Enterprises

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OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

**PROCUREMENT APPEALS**

IN THE APPEAL OF,

BASIL FOOD INDUSTRIAL SERVICES  
CORPORATION,

Appellant

APPEAL NO: OPA-PA-16-006  
OPA-PA-16-009

**DECISION & ORDER RE APPELLANT'S  
MOTION TO STRIKE APPEARANCE OF  
SH ENTERPRISES**

To:

**Purchasing Agency:**

General Services Agency  
C/O Nicolas Toft, Esq.  
Assistant Attorney General  
Office of the Attorney General of Guam  
590 S. Marine Corps Drive, Suite 706  
Tamuning, Guam, 96913  
Facsimile: (671) 472-2493

**Appellant:**

Basil Food Industrial Services Corporation  
C/O Elyze M. Iriarte, Esq.  
Iriarte Camacho Calvo Law Group LLC  
134 W. Soledad Ave., Suite 401  
Hagåtña, Guam, 96910  
Facsimile: (671) 477-4375

**Interested Party:**

SH Enterprises, Inc.  
C/O Joyce C.H. Tang, Esq.  
Civille & Tang, PLLC  
330 Hernan Cortez Ave., Suite 200  
Hagåtña, Guam, 96910  
Facsimile: (671) 477-2511

**THIS MATTER**, came before the Hearing Officer for a Hearing on the Appellant's  
Motion to Strike the Appearance of SH Enterprises, Inc. The Purchasing Agency was

1 represented by its Counsel of Record, NICOLAS TOFT, ESQ. The Appellant was represented  
2 by its Counsel of Record, ELYZE M. IRIARTE, ESQ. Interested Party SH ENTERPRISES,  
3 INC., was represented by its counsel of record JOYCE C.H. TANG, ESQ. After hearing the  
4 statements of the parties and for good cause shown, the Hearing Officer hereby FINDS and  
5  
6 ORDERS the following:

7         1. The Appellant's Motion to Strike the Appearance of SH Enterprises, Inc., is hereby  
8 DENIED. The Appellant's Motion relies on its argument that its appeal in OPA-PA-16-006  
9 concerns a contract controversy and the resolution of this controversy is limited to the two (2)  
10 parties to the contract in that case which are the Appellant and the Purchasing Agency.<sup>1</sup>  
11 However, this argument is not supported by Guam's Procurement Laws or Regulations. The  
12 Appellant and Purchasing Agency are proper parties to this appeal. If a contract controversy is  
13 not resolved by mutual agreement, the Chief Procurement Officer or her designee shall promptly  
14 issue a decision in writing. 5 G.C.A. §5427(c). Further, the aggrieved contractor may file an  
15 appeal to the Public Auditor within sixty (60) days of receipt of the decision or within sixty (60)  
16 days following the Purchasing Agency's failure to render a timely decision regarding the  
17 contract controversy. 5 G.C.A. §5706<sup>1</sup>(b) and 2 G.A.R., Div. 4, Chap. 12, §12301(a). Here, the  
18 Purchasing Agency issued its decision concerning the contract controversy on June 3, 2016 and  
19 the Appellant filed this appeal on June 7, 2016 which is well within the sixty (60) day period  
20 required by 5 G.C.A. §5706(b) and 2 G.A.R., Div. 4, Chap. 12, §12301(a).<sup>2</sup> Hence, both the  
21 Appellant and the Purchasing Agency are proper parties to the appeal filed in OPA-PA-16-006.  
22 However, this fact, by itself, does not preclude SH ENTERPRISES, INC., from participating in  
23 OPA-PA-16-006 as an interested party.

24         SH ENTERPRISES, INC., is a proper interested party in OPA-PA-16-006. The term  
25 "Interested Party" as used in procurement appeals means an actual or prospective bidder, offeror,  
26

27  
28 <sup>1</sup> Page 2, Appellant's Motion to Strike the Appearance of SH Enterprises, Inc.,  
filed on July 11, 2016 in OPA-PA-16-006 (Hereafter Referred to as "Motion.")

<sup>2</sup> Pages 1 and 2, Appellants Appeal filed June 7, 2016 in OPA-PA-16-006.

1 or contractor who appears to have a substantial and reasonable prospect of receiving an award if  
2 the appeal is denied. 2 G.A.R., Div. 4, Chap. 12, §12102(b). Here, SH Enterprises was an actual  
3 bidder for the solicitation that resulted in the Appellant receiving the contract at issue in OPA-  
4 PA-16-006. The Appellant also recognizes that SH ENTERPRISES, INC., was an unsuccessful  
5 bidder for the solicitation that resulted in the Appellant being awarded the contract at issue OPA-  
6 PA-16-006.<sup>3</sup> Further, SH ENTERPRISES, INC., appears to have a substantial and reasonable  
7 prospect of receiving an award if the appeal is denied. The Appellant indicates that SH  
8 ENTERPRISES, INC., was the prior contractor for the services the Appellant was providing the  
9 Purchasing Agency.<sup>4</sup> The Appellant also states that after it was terminated by the Purchasing  
10 Agency, the Purchasing Agency issued an Emergency Procurement Solicitation and that SH  
11 ENTERPRISES, INC., was awarded the contract to provide the same services that Appellant was  
12 formerly providing the purchasing agency. Hence, based on these facts, SH ENTERPRISES,  
13 INC., is a proper interested party in this appeal because it was an actual bidder for the solicitation  
14 that resulted in the Appellant's award of the contract at issue in OPA-PA-16-006 and because it  
15 has a substantial and reasonable prospect of receiving an award if the appeal in OPA-PA-16-006  
16 is denied.

17 2. SH ENTERPRISES, INC., shall remain an interested party in both OPA-PA-16-006  
18 and OPA-PA-16-009.

19 **SO ORDERED** this 10<sup>th</sup> day of August, 2016 by:

20  
21  
22 

23 ANTHONY R. CAMACHO, ESQ.  
24 Hearing Officer  
25  
26  
27

28 <sup>3</sup> Page 1, Motion.

<sup>4</sup> Id., page 3.

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	<b>Mr. Nicolas Toft</b> <b>Assistant Attorney General</b> Office of the Attorney General of Guam 590 S. Marine Corps Drive, Suite 706 Tamuning, Guam, 96913 Fax: (671) 472-2493	<b>Pages:</b>	4 (including cover page)
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	<b>Joyce C.H. Tang, Esq.</b> (Attorney for Interested Party SH Enterprises, Inc.) Civile & Tang, PLLC 330 Hernan Cortez Avenue Suite 200 Hagatna, Guam 96910 Phone: (671) 472-8868/9 Fax: (671) 477-2511	<b>Phone:</b> (671) 475-0390 x. 208 <b>Fax:</b> (671) 472-7951	

**Re:** OPA-PA-16-006 and 16-008 Decision & Order RE Appellant's Motion to Strike Appearance of SH Enterprises

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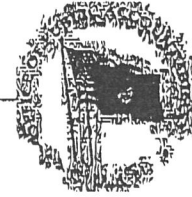
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