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PROCERENTENT APPEALS

MILE No. Office

OFFICE OF THE PUBLIC AUDITOR PROCUREMENT APPEAL

IN THE APPEAL OF:) APPEAL CASE No. OPA-08-012
TOWN HOUSE DEPARTMENT STORES, INC. DBA ISLAND BUSINESS SYSTEMS & SUPPLIES,	
APPELLANT	HEARING BRIEF)
))
)

The General Services Agency, Department of Administration, Government of Guam (hereafter, GSA) has admitted to every issue of fact in this matter. GSA has complied with the two requests of the Appellant, Town House Department Stores, Inc. DBA Island Business Systems & Supplies (hereafter IBSS). These requests are: (1) to use proprietary specifications in the purchasing process, and (2) to use the competitive sealed bid method of source selection when it is the intention of the Government of Guam to acquire a service or supply from the Federal Supply Schedule Program. GSA has submitted its Exhibits A and B as attachments to Respondent's Hearing Materials as proof that it has complied with Appellant's demand for relief in this matter.

IBSS seeks to have a hearing on this matter despite the complete resolution of the question presented by the case. GSA asserts that this matter is completely resolved. GSA has complied with the request of IBSS. This matter is now moot.

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Rebuttal to Comment on Agency Report

In the Appeal of Tow House Department Stores, Inc. dba Island Business Systems and Supplies

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IBSS has been accorded every remedy it has requested in its Notice of Appeal. There is no dispute to be resolved by a Hearing Officer. *Carl Corp. v State of Hawaii, Dept. of Education,* 93 Hawaii 155, 997 P.2d 567 (2000). *Thomas Sysco Food Service v. Martin,* 983 F.2d 60 (CA6, 1983). After receiving 100% of the relief requested, IBSS asserts that it deserves more.

Carl Corp., supra, is like the present matter. In Carl the appellant protested a contract awarded to a competitor for automation services for the state public library system. Carl Corporation sought the rescission of the contract (and ultimately, award of the contract to itself). Initially, a Hearing Officer ruled that he did not have the authority to act on the request and Carl Corporation appealed to court. The trial court ordered the Hearing Officer to take the appeal and either rescind the contract or ratify the contract. Before the Hearing Officer could take up the matter again, the State terminated the questioned contract, as terms of the contract permitted, with the intent to redo the entire contracting process. Once the contract was terminated, the Hearing Officer determined that the matter was moot. The Hearing Officer reasoned that he could not ratify a contract that no longer existed, and could not rescind for the same reason. On appeal, the Supreme Court of Hawaii agreed, stating that mootness is properly invoked where "events ... have so affected the relations between the parties that the two conditions for justiciability relevant on appeal - adverse interest and effective remedy - have been compromised." Application of Thomas, 73 Haw. 223, 226, 832 P.2d 253, 254 (1992) (quoting Wong v Board of Regents, University of Hawaii, 62 Haw. 391, 394, 616 P2d 201, 203-04 (1980).

GSA would submit that those same two conditions of justiciability are lacking in this matter as well. First, there are no longer any adverse interests between IBSS and GSA. GSA is doing what it has been requested to do. Further, IBSS has not only an effective remedy; it has the remedy it has requested.

There is a settled exception to the rule that appellate courts will not consider moot questions. If the question raised concerns important public interests, and it is likely that similar questions arising in the future would, as well, become moot before an authoritative determination can be made, the exception to the mootness doctrine is invoked. *Los Angeles County v. Davis*, 440 US 625, 99 S.Ct. 1379, 59 L. Ed.2d 642 (1979); *Wong. supra.* at 394. Generally, courts have been concerned about questions that evade review because of the passage of time and are capable of being repeated. These factors are not present here.

The regulations adopted by the Public Auditor for the conduct of these hearings state that "[t]hese rules shall be construed and applied to provide for the expeditious resolution of controversies in accord with the requirements of 5 GCA Chapter 5, (Guam Procurement Law) and the Guam Procurement Regulations..." 2 GAR Div. 4 §12101. The just, fair and expeditious resolution of this controversy is to recognize that the controversy is over.

GSA respectfully requests that the Public Auditor recognize that this matter is resolved, recognize that IBSS has received all of the relief it has requested in its Statement Specifying Ruling Requested, p. 23, Notice of Appeal, and dismiss this matter.

Dated this 29th day of December, 2008.

OFFICE OF THE ATTORNEY GENERAL Alicia G. Limtiaco, Attorney General of Guam

Rv'

OHN WEISENBERGER

Assistant Attorney General