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

7 *Carl Corp., supra*, is like the present matter. In *Carl* the appellant protested a contract  
8 awarded to a competitor for automation services for the state public library system. Carl  
9 Corporation sought the rescission of the contract (and ultimately, award of the contract to  
10 itself). Initially, a Hearing Officer ruled that he did not have the authority to act on the  
11 request and Carl Corporation appealed to court. The trial court ordered the Hearing Officer  
12 to take the appeal and either rescind the contract or ratify the contract. Before the Hearing  
13 Officer could take up the matter again, the State terminated the questioned contract, as terms  
14 of the contract permitted, with the intent to redo the entire contracting process. Once the  
15 contract was terminated, the Hearing Officer determined that the matter was moot. The  
16 Hearing Officer reasoned that he could not ratify a contract that no longer existed, and could  
17 not rescind for the same reason. On appeal, the Supreme Court of Hawaii agreed, stating that  
18 mootness is properly invoked where "events ... have so affected the relations between the  
19 parties that the two conditions for justiciability relevant on appeal – adverse interest and  
20 effective remedy – have been compromised." *Application of Thomas*, 73 Haw. 223, 226, 832  
21 P.2d 253, 254 (1992) (quoting *Wong v Board of Regents, University of Hawaii*, 62 Haw. 391,  
22 394, 616 P2d 201, 203-04 (1980).

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

