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Public Auditor Promotes Integrity of Procurement Process

Inaugural and Transition Committees Put on Notice to Comply with Procurement Statutes

Hagåtña, Guam – With the election season all wrapped up and as winning candidates prepare for their inaugural activities in the coming year, Public Auditor Benjamin J.F. Cruz has issued an advisory on the ethical standards concerning contributions to inaugural and transition committees. In early November, Cruz transmitted a letter and legal memorandum from the Office of Public Accountability’s (OPA) legal counsel to candidates forewarning them of the procurement statutes concerning contributions to inauguration committees.

At present, Guam law strictly enforces a \$2,000 maximum contribution to candidates to ensure they are not beholden to big donors when elected. However, when the election is over, winning candidates are able to solicit and receive “donations” for their inaugural activities. Sums donated are 10, 20, and sometimes 25 times the maximum campaign contributions. What is of grave concern is a transition committee soliciting and/or receiving donations from vendors or prospective vendors and how it might affect the vendor’s standing as a responsible vendor in that it could be alleged and found in violation of 5 GCA §5630 concerning gratuities and kickbacks and giving favors to the territory. Cruz has broached his concern with the Guam Election Commission, however, they stated their jurisdiction was limited to the conduct of the election and does not extend to inaugural activities.

The OPA has issued a prior audit on a transition committee, OPA Report No. 19-06, *Governor and Lieutenant Governor’s Transition Fund*, which pointed out key concerns on proper expenditures and requirements to follow Guam procurement law. The audit also confirmed donation amounts and expenditures for the Transition Fund. You may view this prior audit at <https://www.opaguam.org/performance-audits/opa-report-no-19-06-governor-and-lieutenant-governor%E2%80%99s-transition-fund>.

Based on 5 GCA §5703 (f), “(t)he Public Auditor’s jurisdiction shall be utilized to promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5.” Cruz announced that pursuant to this mandate, he has decided to exercise his authority to strictly enforce the provisions of 5GCA §5630 Gratuities and Kickbacks, specifically 5 GCA 5630(d) which reads:

“Favors to the Territory. ... It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontract or under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of the Territory or for any employee or agent of the Territory to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the Territory whether or not such favor gratuity may be considered a reimbursable expense of the Territory, during the pendency of any matter related to procurement, including contract performance warranty periods.”

Cruz also announced and informed the Attorney General, the Attorney General-Elect, and the Governor that he has adopted a Legal Memorandum finding that inaugural and transition committees should comply with the procurement statutes and regulations when procuring for upcoming the inaugural and transition events. The Standards of Conduct, also known as the Ethics in Public Contracting provisions, will be strictly interpreted and enforced. This means that vendors or prospective vendors who violate the Favors to the Territory provisions can be deemed, alleged, or adjudged as “not responsible” in a procurement or procurement appeal or decision.

“In early November, we informed candidates of their ethical responsibilities when it comes to soliciting and receiving donations for their inaugural activities. As Public Auditor, it is within my jurisdiction and responsibility to promote the integrity of the procurement process. Pay to play schemes are an affront to the trust and confidence our people place in us as public servants. I have already met with AG-Elect Moylan and discussed this matter in detail to prepare for and prevent any malfeasance,” remarked Cruz.

Please visit our website at www.opaguam.org for more information. You may also contact Vincent Duenas at vduenas@guamopa.com or (671) 475-0390 ext. 219.

Attachment: OPA Legal Counsel Memorandum on Procurement Law Ethical Standards Concerning Contributions to Inauguration Committees

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