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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
DATE: 07-12-16  
TIME: 4:20  AM  PM BY: JTD  
FILE NO OPA-PA: 16-002

**OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS**

IN THE APPEAL OF	)	<b>APPEAL NO. OPA-PA-16-002</b>
	)	
1-A GuamWEBZ,	)	<b>PURCHASING AGENCY'S</b>
	)	<b>OBJECTION TO AND MOTION TO STRIKE</b>
	)	<b>PAGES 1-3 OF APPELLANT GUAMWEBZ'S</b>
Appellant.	)	<b>BRIEF REGARDING REMEDIES</b>
	)	
_____	)	

Purchasing Agency Guam Community College ("GCC") strenuously objects to and requests that the Hearing Officer strike pages 1 through 3 of Appellant 1-A GuamWEBZ's ("GuamWEBZ") Brief Regarding Remedies filed July 11, 2016. As explained below, these pages should be stricken because material therein exceeds the scope of the brief that the Hearing Officer granted leave to submit.

**PERTINENT BACKGROUND**

During the Formal Hearing on June 7, 2016, the Hearing Officer granted the parties leave to submit optional briefs regarding what they "think an appropriate remedy should be" for the instant Appeal. (See Record'g Formal Hearing (Jul. 7, 2016) at 10:40 to 11:33; *id.* at 42:02 to 42:15.) These optional "Remedies Briefs" were to be submitted by 5:00 p.m. on July 11, 2016. (See *id.*)

Both parties filed Remedies Brief on July 11, 2016. GuamWEBZ's so-called "Remedies Brief" exceeds the permission granted by the Hearing Officer because, on pages 1 through 3, GuamWEBZ presents "Proposed Findings of Fact" and "Proposed Conclusions of Law." (See Appellant's Remedies Br. at 1-3.) The Hearing Officer clearly did not grant the parties leave to submit proposed findings of fact and conclusions of law. (See Record'g of Formal Hearing (Jul. 7, 2016) at 10:40 to 11:33; *id.* at 42:02 to 42:15.)

Pages 1 through 3 of GuamWEBZ's Remedies Brief are unequivocally outside the scope of the brief that the Hearing Officer granted permission to file.<sup>1</sup> Accordingly, GCC strenuously object to pages 1 through 3 of GuamWEBZ's Remedies Brief and requests that the Hearing Officer strike these pages from the record of this Appeal.

#### LEGAL STANDARD

Under 2 GAR, Div. 4, § 12109(d), the Hearing Officer has the authority to "[r]ule on motions, and other procedural items on matters pending before such officer." Thus, the Hearing Officer has powers akin to a court's inherent authority to strike improperly filed documents from its docket. *Cf. Ready Transp., Inc. v. AAR Mfg.*, 627 F.3d 402, 404 (9th Cir. 2010) (concluding that the courts' "inherent powers" include granting a motion to strike an improperly filed document because such "inherent powers are mechanisms for 'control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases'" (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991))).

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<sup>1</sup> What is more, the bulk of the statements on these pages are unsupported by the record and/or the law.

## ARGUMENT

The Hearing Officer's instructions were very clear that the parties could submit briefs regarding "what they think an appropriate remedy should be" for the instant Appeal. (Record'g of Formal Hearing (Jul. 7, 2016) at 10:40 to 11:33.) Also clear is that the Hearing Officer never granted the parties permission to submit proposed findings of fact and conclusions of law, nor did GuamWEBZ request leave to submit them.

There is no question that more than half of GuamWEBZ's so-called Remedies Brief contains "Proposed Findings of Fact" and "Proposed Conclusions of Law." (*See* Appellant's Remedies Br. at 1-3.) It is axiomatic that findings of fact and conclusions of law are not a remedy for any case — let alone for a procurement appeal where the Procurement Code and Regulations specifically provide for distinct remedies, *see* 5 GCA § 5451, 5 GCA § 5452; 2 GAR, Div. 4, § 9105; 2 GAR, Div. 4, § 9106.

GCC strenuously objects to GuamWEBZ's "Proposed Findings of Fact" and "Proposed Conclusions of Law" as being outside the scope of the Remedies Brief permitted by the Hearing Officer — not to mention that several of GuamWEBZ's statements under these headings are unsupported by the record and/or the law.

Accordingly, GCC respectfully requests that the Hearing Officer strike pages 1 through 3 of GuamWEBZ's so-called Remedies Brief.<sup>2</sup>

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<sup>2</sup> As a word of caution if the Public Auditor is planning to use any language from the actual "remedies" section of GuamWEBZ's brief: Several sentences on pages 4 and 5 of the brief are taken verbatim from a subsection of John Thos. Brown's procurement primer, without any credit given to the original author. (*Compare* Appellant's Remedies Brief at 4-5 *with* John T. Brown, *Procurement Lore or Procurement Law?: A Guam Procurement Process Primer*, at 295 subsection (g) (Working Draft ver. 2.2 September 2011); *see also* John T. Brown, *Procurement Lore or Procurement Law?: A Guam Procurement Process Primer*, at 275-76 subsection (g) (ver. 2.1 June 2011) (same as *id.*).

**CONCLUSION**

For the foregoing reasons, GCC strenuously objects to and respectfully requests that the Hearing Officer strike pages 1 through 3 of Appellant GuamWEBZ's Brief Regarding Remedies filed on July 11, 2016.

If, however, the Hearing Officer is inclined to take into consideration GuamWEBZ's proposed findings of fact and conclusions of law, GCC respectfully requests an opportunity to submit its own proposed findings of fact and conclusions of law.

Respectfully submitted this 12th day of July 2016.

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By:   
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**REBECCA J. WRIGHTSON**