

Joshua D. Walsh  
Edwin J. Torres  
**RAZZANO WALSH & TORRES, P.C.**  
139 MURRAY BLVD.  
HAGATNA, GUAM 96910  
TEL: (671) 989-3009  
jdwalsh@rwtguam.com  
etorres@rwtguam.com

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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO OPA-PA: 20-008

**PROCUREMENT APPEAL OF DENIAL OF PROCUREMENT PROTEST  
IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

**PART I.**

In the Appeal of

ST Corporation, Inc.,

Appellant.

**DOCKET NO. OPA-PA-20-008**

**REPLY TO GSA'S OPPOSITION  
TO MOTION TO COMPEL**

**I. INTRODUCTION**

On January 5, 2021, ST Corporation, Inc. ("ST" or "Appellant"), by and through its undersigned counsel, moved the Office of Public Accountability ("OPA") for an Order compelling the General Services Agency, Department of Administration ("GSA") to supplement the Procurement Record previously filed in this case (the "Motion"). The parties stipulated on January 12, 2021, to allow the GSA additional time to prepare and file its Opposition to the Motion. That additional time was stipulated to as the parties were nearing a settlement. GSA's position on the

settlement changed, and GSA filed its Opposition to the Motion on January 15, 2021.

This Reply is submitted to address the failings of the Opposition.

**A. THE GSA CONFIRMS THAT ITS PROCUREMENT RECORD CONTAINS NO LOG OF COMMUNICATIONS**

The GSA Opposition does not contest that, as the procuring agency in the IFB, it had a statutory obligation to maintain an accurate and complete Procurement Record. 5 G.C.A. § 5249. GSA also does not contest that it had an obligation to provide, within five days after the filing of a procurement appeal, a complete copy of the Procurement Record. 2 G.A.R. Div. § 12104(c)(3). GSA's opposition acknowledges that its Procurement Record was lacking the communication log required by law, and a record has since been provided.<sup>1</sup> Opposition, 1. While a communication log has been provided, the record confirms that the GSA both kept an incomplete record for this procurement, and only supplemented the record when Motion practice and an unsuccessful settlement forced the matter.

**B. THE GSA CONFIRMS THAT NO WRITTEN DETERMINATION ABOUT THE NEED FOR RESTRICTIVE SPECIFICATIONS EXISTS.**

The GSA has confirmed in its opposition that the GSA has no written determination justifying the narrow product specifications contained in the IFB.<sup>2</sup> GSA instead seeks to justify its narrow specifications as being appropriate generally, thus removing any need for the written justification required under Guam law. *See,*

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<sup>1</sup> The offered communication log was provided as an attachment to the GSA's opposition. The Procurement Record remains un-supplemented.

<sup>2</sup> It should be noted that, while the GSA's Agency level protest decision touched on the general nature of product specifications as allowed under Guam law, the protest denial was based upon the belief by GSA that ST's protest was untimely.

2 G.A.R. § 4106(a); 5 GCA § 5268(b) (“Purchase descriptions shall not specify a product having features which are peculiar to the products of one manufacturer, producer or distributor unless it has been determined in writing by the Director of the using agency that those particular features are essential to its requirements and specifying the reason that similar products lacking those features would not meet minimum requirements for the item.”).<sup>3</sup>

**C. IF GSA DOES NOT HAVE WRITTEN JUSTIFICATION FOR THE RESTRICTIVE SPECIFICATIONS OF THE IFB, GSA SHOULD BE COMPELLED INSTEAD TO PROVIDE THE SOURCE OF THE SPECIFICATIONS IT IS RELIANT UPON.**

GSA claims — without citation to law or analogous case — that its seeking comments and feedback was sufficient to justify the restrictive specifications it issued. Opposition, 2. The GSA then claims that its narrow restrictions are acceptable, since “the statutory standard is maximum practicable competition, not maximum competition.” Opposition, 2. The GSA then claims that the narrow specifications— specifications that only allow for one size can of air freshener or a specific load size of laundry detergent —are standard and should be accepted as the fruit of a market research effort in 2012. Opposition, 3.

GSA confirms in its Opposition that it does not have the records ST seeks with regard to the narrow specifications in the IFB. Simply put, a written determination about the need for these specific features, we have been told, does not exist. **ST acknowledges that GSA cannot be compelled to produce records that it does not have.** However, if GSA does not have written justification for narrow

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<sup>3</sup> ST reserves its rights to address these arguments regarding the merits of the specifications in the further briefing that will be allowed before the OPA.

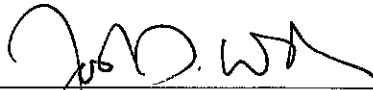
specifications, GSA should at least have a clear source for the specifications. Therefore, GSA should then, at a minimum, be required to supplement the record by publishing the Sources of the Specifications it has used for the IFB. 2 G.A.R. § 4108 mandates that "The specifications contained in any invitation for bids or request for proposals, and any amendment thereto, for the procurement of supplies shall identify the person responsible for drafting the specifications and any persons, technical literature or manufacturer's brochures relied upon by the responsible person in drafting the specifications." None of these disclosures have been provided.

## II. CONCLUSION

GSA has admitted that its Procurement Record provided under Guam law was deficient. The GSA has also confirmed that it has no written determination about the restrictive specifications at issue in this appeal. Given that fact, the GSA should instead be compelled to identify, as required by law, the person responsible for drafting the specifications and any persons, technical literature or manufacturer's brochures relied upon by the responsible person in drafting the specifications.

*Respectfully submitted* on January 19, 2021.

**RAZZANO WALSH & TORRES, P.C.**

By:   
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**JOSHUA D. WALSH**  
**EDWIN J. TORRES**  
*Attorneys for Appellant*