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 PROCUREMENT APPEALS

DATE: 11.13.15
 TIME: 1:55 AM PM BY: [Signature]
 FILE NO OPA-PA: 15-009

IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of)	DOCKET NO. OPA-PA: 15-009
)	
KORANDO CORP.)	
Appellant,)	DEPARTMENT OF PUBLIC WORKS'
)	REPLY MEMORADUM IN SUPPORT OF
and)	MOTION FOR SUMMARY JUDGMENT
)	
Department of Public Works)	
)	
Purchasing Agency.)	

Come Now, Defendants, by and through the Attorney General of Guam, and submit the following Reply Memorandum in support of their motion for summary judgment.

- 1. Korando contracted to reconstruct the Bile/Pigua Bridges according to the Plans and Specifications contained in the Contract.**

It is undisputed that **Korando Corporation** (“**Korando**”) contracted to reconstruct the Bile/Pigua Bridges in accordance with the plans and specifications contained therein. Design specifications set forth in detail the materials to be employed and the manner in which the work is to be performed, and the contractor is required to follow them as one would a road map and

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without deviation. **L.L. Simmons Co. v. United States**, 412 F.2d 1360 (Ct. Cl. 1969). As the Contract was never amended Korando at all times was required to perform the Bile/Pigua work in strict conformance to the Contract plans and specifications.

It is also undisputed that Korando proposed alternate plans on October 27, 2014 (**Korando's Critical Submittal**) that substantially deviated from the contracted for plans and specifications and submitted them for review. See **DPW's Motion for Summary Judgment** at pp. 5-10. Korando failed to establish that the agreed to original plans and specifications were inadequate and thus remained contractually obligated to construct the replacement bridges as agreed. *Id.* If Korando had contracted the Bile/Pigua Project as contracted for it would not have been responsible for defects in the plans and specifications. See *United States v. Spearin*, 248 U.S. 132 (1918) (But if the contractor is bound to build according to plans and specifications prepared by the owner, the contractor will not be responsible for consequences of defects in the plans and specifications (citations omitted)).

It is also undisputed that Korando had the right to select the means and methods for performing the Bile/Pigua Project however as Korando's Critical Submittal substantially deviated from the contracted for plans and specifications it was required to submit a timely **Change Order Proposal ("COP")**, which it failed or otherwise refused to do.

Korando's preliminary plans for relocation of Guam Power Authority's ("GPA") power lines were incomplete and not stamped by an engineer. See **Submittal Log dated April 28, 2015**. See also **Korando's Response**, at 14. Further, other than Korando's tenuous argument that Stanley altered the submittal logs, the Project correspondence documents that not only did Stanley not interfere with the contractor but that in response to Korando's ongoing failure to coordinate with GPA Mr. Marlowe requested PBI arrange a meeting between GPA, DPW, PB,

PTG and Stanley Consultants ASAP because of the “need to figure out what is going on and what we can do to expedite the project.” See DPW Rebuttal Exhibit J, Marlowe/Kobayashi Emails.

The OPA should hold that DPW fully complied with its contractual obligations, that Stanley was pro-active in trying to trying to get Korando to comply with its obligations and that Korando, having never submitted a change order for its Critical Submittal, remained obligated to construct the Bile/Pigua Project in accordance with the contracted for plans and specifications, which it failed to do.

2. Stanley complied with its obligation to update and maintain accurate submittal logs under contract with DPW.

It is undisputed that all submittals made by Korando were maintained by Stanley. DPW Motion for Summary Judgment Exhibit C Joseph Pecht Declaration dated November 9, 2015.

It is also undisputed that the submittal log, request for information, invoice tracking, construction progress and related matters were reviewed at weekly meetings attended by Korando, Stanley’s Jack Marlowe and Parsons Transportation Group’s Joseph Petch. *Id. at Paragraph 4*.

The OPA should find that Stanley maintained a proper submittal log and Korando, an experienced Guam contractor, was on full notice of Stanley’s not uncommon practice of correcting and updating the record, which neither harmed nor prejudiced the contractor.

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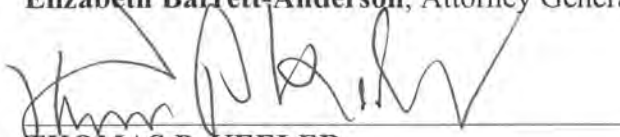
CONCLUSION

DPW is entitled to summary judgment dismissing Korando's OPA Appeal.

Respectfully submitted this 13th day of November, 2015.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General

By:



THOMAS P. KEELER
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a copy of the forgoing upon opposing counsel by hand delivery addressed to:

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Date this 13th day of November, 2015.

By:



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