



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

PROCUREMENT APPEALS

IN THE APPEAL OF,

KORANDO CORPORATION,

Appellant

APPEAL NO: OPA-PA-15-009

**DECISION AND ORDER RE
APPELLANT'S REQUEST FOR
SUBPOENAS, REQUEST FOR
DISCOVERY, AND MOTION TO STRIKE**

To: **Purchasing Agency:**
Department of Public Works, Government of Guam
C/O Thomas P. Keeler, Esq., Assistant Attorney General
Office of the Attorney General, Civil Solicitor Division
ITC Bldg., Ste. 706
Tamuning, Guam, 96913
Facsimile: (671) 472-2493

Appellant:
Korando Corporation
C/O Joyce C.H. Tang, Esq.
Civille & Tang PLLC
330 Hernan Cortez Ave., Ste. 200
Hagåtña, Guam, 96910
Facsimile: (671) 477-2511

THIS MATTER came before the Hearing Officer on November 24, 2015 for a hearing for the Appellant's Request for Subpoenas, Request for Discovery, and Motion to Strike the Purchasing Agency's Motion for Summary Judgment. Byong Ho and Kiwook Hahn were present on behalf of Appellant and were represented by Appellant's Counsel of Record, Joyce Tang, Esq. The Purchasing Agency was represented by its counsel of record, Assistant Attorney General Tom Keeler, Esq. After reviewing the record in this matter and after hearing the arguments of the parties, the Hearing Officer hereby FINDS and ORDERS the following:

1. The Appellant's Request for Subpoenas is hereby GRANTED. The Public Auditor is authorized to issue subpoenas compelling the attendance of persons at her hearings to adjudicate procurement appeals. 2 G.A.R., Div. 4, Chap. 12, §12108(d) and 5 G.C.A. §9217.

1 Therefore, the OPA will process and issue the subpoenas provided by the Appellant for the
2 December 9, 2015 hearing in this matter.

3 2. The Appellant's Request for Discovery is hereby DENIED. Generally, the
4 jurisdiction of the Public Auditor, is limited to matters properly submitted before her. 5 G.C.A.
5 §5703. Here, the Appellant is requesting that the OPA issue an order compelling the Purchasing
6 Agency to comply with the Appellant's Sunshine Act requests it made to the Purchasing Agency.
7 The "Sunshine Act" is codified in 5 G.C.A. §10101 *et. seq.* Those laws state that any person
8 may institute proceedings for injunctive relief or declarative relief or writ of mandate in the
9 Superior Court of Guam to enforce that person's right to inspect or receive a copy of any public
10 record or class of public records. 5 G.C.A. §10111(b). Thus, the proper forum to enforce the
11 Appellant's rights under the Sunshine Act is the Superior Court of Guam and not the OPA.
12 Further, to the extent that the Appellant's motion requested the Purchasing Agency supplement
13 its procurement record filed in this case, the OPA has previously ordered the Purchasing Agency
14 to do so. Despite the denial of the Appellant's request for discovery, the Appellant may still
15 make the appropriate motion should it have evidence that the Purchasing Agency has failed to
16 comply with the OPA's prior orders compelling the Purchasing Agency to disclose the complete
17 procurement record in this matter to the OPA.

18 3. The Appellant's Motion to Strike the Purchasing Agency's Motion for Summary
19 Judgment is hereby DENIED. The crux of the Appellant's motion is that the Purchasing Agency
20 did not file the correct exhibits to its motion, that it filed one of the declarations supporting its
21 motion late, and that it failed to serve the Appellant the motion the day it was filed. After
22 reviewing the record in this matter, the Hearing Officer finds that all of the Purchasing Agency's
23 aforementioned acts and omissions were minor, unintentional, and did not prejudice the

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1 Appellant's very comprehensive opposition to the Purchasing Agency's Motion for Summary
2 Judgment.

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4 **SO ORDERED THIS 3rd day of December, 2015 by:**

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9 ANTHONY R. CAMACHO, ESQ.
10 Hearing Officer