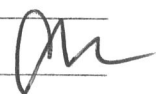


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IN THE OFFICE OF THE PUBLIC AUDITOR

In the Appeal of
1-A GuamWEBZ,

Appellant

DOCKET NO. OPA-PA -16-002

**APPELLANT'S OPPOSITION TO
PURCHASING AGENCY'S MOTION
TO STRIKE PAGES 3-6 OF APPELLANT'S
OPPOSITION TO MOTION FOR
EXPEDITIOUS DISPOSITION
(DISMISSAL) ON THE MERITS**

Appellant 1-A GuamWEBZ ("GuamWEBZ"), via its undersigned counsel, responds herein to Purchasing Agency Guam Community College's ("GCC's") April 29, 2016 Motion to Strike Pages 3-6 of Appellant's [April 25th] Opposition to [GCC's April 15th] Motion For Expeditious Disposition (Dismissal) On the Merits. As its latest tactical ploy to avoid the merits of GuamWEBZ's claims, GCC seeks to toss out more than a third of GuamWEBZ's Opposition without genuine legal grounds for doing so. GCC's latest Motion must be summarily denied.

On page 3 of its April 15th Motion "Background," reiterating GCC's stated legal position dating back to March 14, 2016, GCC once again fully argued, "**GuamWEBZ should have known the IFB's contract would be awarded to WSI when the bids were publicly opened and made available on February 15, 2016...[yet] waited until March 10...[and thus] On March 14, GCC [properly] denied the Protest as untimely.**" [emphasis added].

Continuing on page 4 of its April 15th Motion “**Argument** [bold in the original],” GCC wrote, “In its Appeal, GuamWEBZ complains that: its Protest was timely.” GCC then emphatically explained in original italics it was “*in no way conceding* – the issue of whether GuamWEBZ’s Protest was timely...[reminding everyone via a footnote that] in its [April 12th] Purchasing Agency’s Statement Answering Allegations of the Appeal, GCC responded to and rebutted the Appeal’s allegations regarding the Protest’s timeliness.”

In other words, GCC *argued* GuamWEBZ’s Protest was untimely, but *mostly* relied on its *previously-made* formal legal arguments to that effect. One week later, via pages 4 and 5 of its April 22nd Rebuttal, GCC formally re-introduced its legal arguments that GuamWEBZ’s Protest was untimely. GCC’s Motion tactics, particularly its Motion to Strike, is pure gamesmanship. As a slight-of-hand maneuver, GCC purports in its April 15th Motion to Dismiss that it is ‘not arguing untimeliness,’ after doing *just that*, apparently so GCC could later claim GuamWEBZ could not respond to the timeliness issue *it had just raised again*. As further proof of its gamesmanship tactics, GCC seeks to strike all of page 4 of GuamWEBZ’s April 25th motion which includes argument related to WSI’s business license and wholly *unrelated* to timeliness.

The obvious rhetorical question is, ‘what if GuamWEBZ has not responded to GCC’s April 15th timeliness arguments?’ Naturally, GCC would then claim GuamWEBZ failed to respond to, at the very least, GCC’s *factual* assertion it “should have known” the basis for its Protest. Thus, GCC could claim, GuamWEBZ has *conceded* that it ‘should have known’ the factual basis for its Protest by February 15th. Without rehashing the same arguments which by now are certainly well-recorded, this ‘admission’ would have proven fatal to GuamWEBZ.

GCC maintains the untenable position that timeliness was a *non-issue* for purposes of its April 15th Motion to Dismiss, despite acknowledging in a footnote of the very same Motion that

timeliness was part of the grounds upon which it sought dismissal. Another obvious rhetorical question is, 'If timeliness is a *non*-issue, then why is GuamWEBZ's *addressing* of 'the timeliness issue' such an *issue* for GCC?' The answer is equally obvious: *because timeliness is such a big issue in this case!* Even the most creative and GCC-friendly reading of the record confirms GCC was actively maintaining and asserting in its April 15th Motion that GuamWEBZ's Protest was untimely. GCC has unduly suffered no prejudice by any of GuamWEBZ's submissions.

Even assuming *arguendo* GCC had *not* formally raised the timeliness issue over and over again, the Hearing Officer could on his or her own volition dismissed GuamWEBZ's Appeal based on his or her own impression (whatever the source of that impression) that GuamWEBZ's underlying Protest was untimely. Therefore, under any interpretation of the Appeal record, GuamWEBZ rightfully addressed the timeliness issue head-on based on the Appeal record. Any allegation that GuamWEBZ's arguments amounted to a surrebuttal of its April 22nd Rebuttal is moot, academic, and quite literally a waste of everyone's time.

Respectfully Submitted this 9th day of May 2016.



John Richard Bordallo Bell
Attorney for Appellant I-A Guam WEBZ

CERTIFICATE OF SERVICE

I, John Richard Bordallo Bell, hereby declare that on the 9th day of May, 2016, I will cause to be served, via e-mail, a true and correct copy of the Opposition to the Motion to Strike Pages 3-6 of the Opposition to the Expeditious Disposition (Dismissal) on the Merits upon the following counsel of record:

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