

Suite 401 DNA Building  
 238 Archbishop Flores St.  
 Hagåtña, Guam 96910



# FAX

<b>To:</b>	<b>Mary A.Y. Okada, Ed.D</b> <b>President</b> <b>Guam Community College</b> P.O. Box 23069 GMF, Guam 96921	<b>From:</b>	<b>Doris Flores Brooks</b> <b>Guam Public Auditor</b> Office of Public Accountability
<b>Phone:</b> <b>Fax:</b>	(671) 735-5542 / 5540 (671) 734-1003	<b>Pages:</b>	5 (including cover page)
<b>CC:</b>	<b>Cabot Mantanona LLP</b> (Attorney for Guam Community College)	<b>Date:</b>	May 27, 2016
<b>Phone:</b> <b>Fax:</b>	(671) 646-2001 (671) 646-0777	<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 208 (671) 472-7951
<b>CC:</b>	<b>John Richard Bordallo Bell</b> (Attorney for 1-A-Guam WEBZ)		
<b>Phone:</b> <b>Fax:</b>	(671) 646-5722/3 (671) 646-5721		

**Re:** OPA-PA-16-002 Decision & Order RE Purchasing Agency's Motion to Strike and Motion for Expeditious Disposition (Dismissal) on the Merits

Urgent     For Review     Please Comment     Please Reply     Please Recycle

**Comments:**

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,  
 Jerrick Hernandez  
 Auditor  
[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.



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

**PROCUREMENT APPEALS**

IN THE APPEAL OF,

1-A GuamWEBZ,

Appellant

) **APPEAL NO: OPA-PA-16-002**

) **DECISION & ORDER RE PURCHASING**  
) **AGENCY'S MOTION TO STRIKE AND**  
) **MOTION FOR EXPEDITIOUS**  
) **DISPOSITION (DISMISSAL) ON THE**  
) **MERITS**

To: **Purchasing Agency:**

Guam Community College  
C/O Rebecca J. Wrightson  
Cabot Mantanona LLP  
929 S. Marine Corps Drive, Suite 200  
Tamuning, Guam, 96913  
Facsimile: (671) 646-0777

**Appellant:**

1-a GuamWEBZ  
C/O John R.B. Bell, Esq.  
341 South Marine Corps Drive, RK Plaza, Suite 309  
Tamuning, Guam, 96913  
Facsimile: (671) 646-5721

**THIS MATTER**, came before the Hearing Officer on May 20, 2016 for a hearing on the Purchasing Agency's Motion to Strike and Motion for Expeditious Disposition (Dismissal) on the Merits. The Purchasing Agency was represented by its Counsel of Record, REBECCA J. WRIGHTSON, ESQ. RHAJ SHARMA appeared on behalf of the Appellant and was represented by Appellant's Counsel of Record, JOHN R.B. BELL, 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. Purchasing Agency's Motion to Strike. As a preliminary matter, the Hearing Officer

1 must decide the Purchasing Agency's Motion to Strike pages 3-6 of the Appellant's Opposition  
2 to the Purchasing Agency's Motion for Expeditious Disposition (Dismissal) on the Merits.  
3 Pages 3-6 of the Appellant's Opposition contain the Appellant's 12 paragraph argument that its  
4 protest was timely filed. The Purchasing Agency alleges that the Appellant's arguments  
5 concerning the timeliness of its appeal are not truly an opposition to its motion, but a sur-rebuttal  
6 to the Purchasing Agency's Rebuttal to the Appellant's Comments on the Agency Report filed in  
7 this matter. Page 4, Purchasing Agency's Motion to Strike filed in this matter. The Appellant  
8 argues that its Opposition's timeliness arguments are valid because the Purchasing Agency raised  
9 the issue of timeliness in its Motion for Expeditious Disposition and the Hearing Officer agrees.  
10 Albeit, the Purchasing Agency's Motion for Expeditious Disposition does state that it was  
11 making its arguments separate and apart from the issue of whether the Appellant's Protest was  
12 timely, there is language elsewhere in the motion justifying Appellant's timeliness arguments in  
13 its opposition. Page 4, Purchasing Agency's Motion for Expeditious Disposition. Specifically,  
14 the motion sets forth the factual contention that: "Despite the fact that GuamWEBZ [Appellant]  
15 should have known that the IFB's contract would be awarded to WSI when the bids were  
16 publically opened and made available on February 15, 2016, GuamWEBZ waited until March 10  
17 to file a bid protest." Page 3, Id. Hence, the Hearing Officer finds that this language asserts the  
18 Purchasing Agency's argument that the Appellant's Protest was untimely. Further, the  
19 Purchasing Agency's placement of this factual contention in the background section of its  
20 motion does not justify striking the Appellant's arguments concerning timeliness because it is  
21 very clear from the Motion for Expeditious Disposition and the Appellant's Opposition to that  
22 motion that the parties have extremely divergent views concerning this issue. The Hearing  
23 Officer finds that the insertion of the Purchasing Agency's factual contention that the  
24 Appellant's Protest was untimely in the background section of its motion opened the door for the  
25 Appellant to argue its factual contention that its protest was timely in the Appellant's opposition.  
26 Accordingly, the Purchasing Agency's Motion to Strike is hereby DENIED .

27 2. The Purchasing Agency's Motion for Expeditious Disposition. Generally, the  
28 Hearing Officer has the authority to settle, simplify, or fix the issues in a proceeding, or to  
consider other matters that may aid in the expeditious disposition of a proceedings either by

1 consent of the parties or upon such officer's own motion. 2 G.A.R., Div. 4, Chap. 12, §12109(a).  
2 Additionally, such authority may be used to find that there are no genuine issues of material fact  
3 concerning an issue when the facts are clear from the record and the parties do not dispute them.  
4 *In the Appeal of Korondo Corp.*, OPA-PA-15-009, Decision and Order Re Appellant's Motion  
5 for Summary Judgment, dated December 3, 2015, page 2 (Office of Public Accountability).

6 The Purchasing Agency argues that there are no genuine issues of material fact concerning  
7 the following issues: (1) Whether WSI qualified for the local procurement preference; (2)  
8 Whether the Purchasing Agency correctly evaluated the Appellant and WSI's bids; and (3)  
9 Whether the Purchasing Agency was required to disclose WSI's proprietary information in its bid  
10 to the Appellant. Page 4, Purchasing Agency's Reply to Opposition to Motion for Expeditious  
11 Disposition. However, after reviewing the record in this matter, it is apparent that the Parties  
12 dispute each and every one of these issues. The Purchasing Agency argues that WSI qualified  
13 for the local procurement preference. Page 5, Statement Answering Allegations of the Appeal,  
14 Agency Report filed on April 12, 2016. However, the Appellant argues that WSI could not have  
15 qualified for the local procurement preference at bid opening because it lacked a Guam Business  
16 License. Page 3, Appellant's Comments to Purchasing Agency's Report filed on April 15, 2016.  
17 Further, the Purchasing Agency argues that its evaluation of the Appellant and WSI's bids was  
18 proper. Page 7, Agency Report. In contrast, the Appellant argues that in several instances, the  
19 Purchasing Agency's evaluation team failed to give the Appellants bid proper credit for various  
20 aspects of its bid. Page 8, paragraph 16, Appeal filed on March 28, 2016. Appellant also argues  
21 that WSI's Proposal failed to meet several requirements of the bid. Page 10, paragraph 22, *Id.*  
22 The Purchasing Agency argues that it was not required to disclose the entirety of WSI's bid to  
23 the Appellant because a portion of it concerned proprietary data. Page 8, Statement Answering  
24 Allegations of the Appeal, Agency Report. The Appellant responds by arguing that portions of  
25 WSI's bid were improperly labeled "Confidential."

26 As to the Purchasing Agency's argument that any procedural deficiencies should be  
27 waived as a minor informalities pursuant to 2 G.A.R., Div. 4, Chap. 3, §3109(m)(4)(B), there has  
28 been no finding in this matter by the Public Auditor that any procedural deficiencies have  
occurred to determine whether such deficiencies are minor informalities. As to the Purchasing

1 Agency's argument that the Purchasing Agency's Award of the IFB Contract to WSI should be  
2 ratified and affirmed because its in the best interest of the Government of Guam, pursuant to 5  
3 G.C.A. §5452, there has been no finding in the matter by the Public Auditor that the solicitation  
4 or award of the contract violated Guam's Procurement Laws and Regulations. Therefore, the  
5 Hearing Officer finds that both these arguments are untimely and shall not be decided at this  
6 stage in the proceedings.

7 Based on the foregoing, the Hearing Officer finds that the parties dispute each of the  
8 issues raised in the this appeal and their underlying facts. Accordingly, the Purchasing Agency's  
9 Motion for Expeditious Disposition is hereby DENIED. The parties may still stipulate to those  
10 facts pursuant to 2 G.A.R., Div. 4, Chap. 12, §12108(d) at or prior to the hearing. Otherwise,  
11 they will have to meet their respective burdens of proving their respective contentions of fact at  
12 the hearing for the Appellant's Appeal in this matter.

13  
14 **SO ORDERED** this 27<sup>th</sup> day of May, 2016 by:

15  
16  
17  
18   
19 ANTHONY R. CAMACHO, ESQ.  
20 Hearing Officer  
21  
22  
23  
24  
25  
26  
27  
28

## TRANSACTION REPORT

MAY/27/2016/FRI 02:27 PM

## BROADCAST

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	MAY/27	02:21PM	7341004			MEMORY NO RESPONSE	7136
002		02:22PM	6460777	0:02:27	5	MEMORY OK	G3 7136
003		02:25PM	6465721	0:01:07	5	MEMORY OK	SG3 7136
TOTAL				0:03:34	10		

TRANSMISSION ERROR OCCURRED AT SOME RECEIVERS.  
PLEASE GIVE THIS TRANSACTION REPORT TO SENDER.

Suite 401 DNA Building  
238 Archbishop Flores St.  
Hagåtña, Guam 96910



# FAX

<b>To:</b>	<b>Mary A.Y. Okada, Ed.D</b> <b>President</b> Guam Community College P.O. Box 23069 GMF, Guam 96921	<b>From:</b>	<b>Doris Flores Brooks</b> <b>Guam Public Auditor</b> Office of Public Accountability
<b>Phone:</b>	(671) 735-5542 / 5540	<b>Pages:</b>	5 (including cover page)
<b>Fax:</b>	(671) 734-1004		
<b>CC:</b>	<b>Cabot Mantanona LLP</b> (Attorney for Guam Community College)	<b>Date:</b>	May 27, 2016
<b>Phone:</b>	(671) 646-2001	<b>Phone:</b>	(671) 475-0390 x. 208
<b>Fax:</b>	(671) 646-0777	<b>Fax:</b>	(671) 472-7951
<b>CC:</b>	<b>John Richard Bordallo Bell</b> (Attorney for I-A-Guam WEBZ)		
<b>Phone:</b>	(671) 646-5722/3		
<b>Fax:</b>	(671) 646-5721		
<b>Re:</b>	OPA-PA-16-002 Decision & Order RE Purchasing Agency's Motion to Strike and Motion for Expeditious Disposition (Dismissal) on the Merits		
<input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input checked="" type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle			

**Comments:**

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,  
Jerrick Hernandez  
Auditor

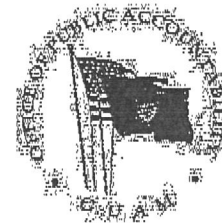
## TRANSACTION REPORT

MAY/27/2016/FRI 04:07 PM

## FAX (TX)

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	MAY/27	04:05PM	7341003	0:02:24	5	MEMORY OK	G3 7148

Suite 401 DNA Building  
238 Archbishop Flores St.  
Hagåtña, Guam 96910



# FAX

<b>To:</b>	<b>Mary A.Y. Okada, Ed.D</b> President Guam Community College P.O. Box 23069 GME, Guam 96921	<b>From:</b>	<b>Doris Flores Brooks</b> Guam Public Auditor Office of Public Accountability
<b>Phone:</b>	(671) 735-5542 / 5540	<b>Pages:</b>	5 (including cover page)
<b>Fax:</b>	(671) 734-1003		
<b>CC:</b>	<b>Cabot Mantanona LLP</b> (Attorney for Guam Community College)	<b>Date:</b>	May 27, 2016
<b>Phone:</b>	(671) 646-2001	<b>Phone:</b>	(671) 475-0390 x. 208
<b>Fax:</b>	(671) 646-0777	<b>Fax:</b>	(671) 472-7951
<b>CC:</b>	<b>John Richard Bordallo Bell</b> (Attorney for I-A-Guam WEBZ)		
<b>Phone:</b>	(671) 646-5722/3		
<b>Fax:</b>	(671) 646-5721		
<b>Re:</b>	OPA-PA-16-002 Decision & Order RE Purchasing Agency's Motion to Strike and Motion for Expeditious Disposition (Dismissal) on the Merits		
<input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input checked="" type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle			

**Comments:**

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,

Jerrick Hernandez

Auditor

[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)