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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: 6/3/16
TIME: 2:55 AM PM BY: JV
FILE NO OPA-PA: 16-003

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
HAGÁTÑA, GUAM

IN THE APPEAL OF) OPA-PA-16-003
)
TLK MARKETING CO., LTD.) **REPLY TO A RESPONSE TO**
) **AGENCY'S MAY 27TH SUBMISSION**
Appellant)
)
)

COMES NOW APPELLEE Guam Visitors Bureau and Replies to Appellant
TLK Marketing's Opposition to the Guam Visitors Bureau's Motion in re a
Hearing filed 27 May 2016.

***** Reply*****

1. TLK Marketing asks this Office to disregard the Guam Visitor's Bureau objection to a hearing in this matter because it was inartfully titled. Filed herewith is an erratum.
2. TLK Marketing did not request a hearing in this matter. This constitutes a waiver. The law states,

In all Appeals to the Public Auditor of suspension or debarment, a hearing shall be conducted. In all other Appeals, including Appeals of protests or contract disputes, the parties shall either request a hearing in writing or

1 waive their right to a hearing and submit the case on the record without a
2 hearing. Request for a hearing shall be made prior to the expiration of the
3 time period allowed for filing comments on the agency report, and shall
4 be in a form substantially similar to Appendix D to this Chapter. Except
5 in unusual circumstances, requests for a hearing received after such time
6 will not be honored.

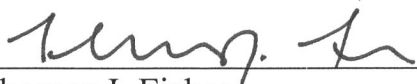
7 *2 Guam Admin. R. & Reg. §12108(emphasis added).*

8 The language of the rule is not permissive, it is mandatory, i.e. “will not be
9 honored”. TLK’s characterization of the law as permissive, i.e. “need not be
10 honored” is counter-factual, without textual support, and wrong.

11 3. TLK argues that an incomplete procurement record mandates the holding
12 of a hearing in this matter. Why a hearing follows “incompleteness” is not
13 explained. In any case the procurement record is complete. To the extent TLK
14 asks for more documents, it has a discovery device through this Office. It is true
15 that the scheduling in this Appeal is compressed, but that is at TLK’s urging. If
16 it feels constrained by these fewer days to prosecute an appeal, TLK is merely
17 hoisted with its own petard.

18 4. TLK argues there is present here an unusual circumstance. That “unusual
19 circumstance” is, it appears, a request by TLK to consolidate two appeals. TLK
20 doesn’t explain why this circumstance is unusual.

21 5. The fact is that TLK neglected to request the hearing through oversight or
22 ignorance; that’s not unusual either, simply a quotidian error.

23 
24 _____
25 Thomas J. Fisher
Legal Counsel for Appellee