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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO OPA-PA: 18-002

8 **PROCUREMENT APPEAL**  
9 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

10 In the Appeal of

11 Korando Corporation,

12  
13 Appellant.

**DOCKET NO. OPA-PA-18-002**

**APPELLANT KORANDO CORPORATION'S  
REQUEST FOR SUPPLEMENTATION OF  
PROCUREMENT RECORD AND TO  
EXTEND THE TIME TO FILE COMMENTS  
TO AGENCY REPORT AND MOTION CUT  
OFF DATE**

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16  
17 Appellant Korando Corporation ("Korando"), by and through its counsel, respectfully  
18 requests that the Office of Public Accountability ("OPA") require the Department of Public Works  
19 ("DPW"), an agency of the Government of Guam, to supplement the Procurement Record with the  
20 required relevant information relating to the issues in this Appeal. On January 24, 2018, DPW filed  
21 its Procurement Record which included the following categories of documents: (1) Bid documents,  
22 (2) Authorization Letters for release documents to the IFB (and related documents), (3) Pre-Bid  
23 Conference Minutes, (4) Addenda, (5) Bid Analysis documents, and (6) Working Documents  
24 consisting of Hydarulic Analyses and a Geotechnical Report ("DPW Procurement Record"). The  
25 DPW Procurement Record consists entirely of pre-award documents and do not relate to the issues in  
26 this Appeal.  
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1 I. INTRODUCTION

2 This Appeal involves DPW's late and improper denial of claims Korando submitted due to  
3 DPW's improper termination of Korando and consequent delay of Korando's execution of the  
4 contract of construction of the Bile/Pigua Bridge Replacement (Project No. GU-NH-NBIS(007))  
5 ("the Contract"). DPW Procurement Record is devoid of any information, documents, emails, or  
6 other communications relating to DPW's review and ultimate denial of Korando's claims, its analysis  
7 of Korando's claims, and its interpretation of and compliance with the 12/16/15 Stipulation and Order  
8 to Rescind Termination.  
9

10 Because DPW has failed to provide the information and documents relating to Korando's  
11 claims in this Appeal, Korando is compelled to request an order from the Public Auditor requiring  
12 DPW's compliance. The scope of documents and information required include all documents,  
13 emails, and correspondence regarding the following:  
14

- 15 a. The 12/16/2015 *Stipulation and Order to Rescind Termination*.
- 16 b. The review, analysis, and denial of Korando's change orders /claim due  
17 to DPW's termination and delay of the project.
- 18 c. The 10/18/2016 Letter from Byong Ho Kim to Glenn Leon Guerrero  
19 regarding the "Claim Due to Termination and Delay of Project."
- 20 c. The 12/28/2016 Letter from Glenn Leon Guerrero to Byong Ho Kim  
21 regarding the "CLAIM DUE TO TERMINATION AND DELAYS OF  
22 PROJECT."
- 23 d. The 1/24/2017 Letter from Byong Ho Kim to Glenn Leon Guerrero  
24 regarding the "Claim Due to Termination and Delay of Project."
- 25 e. The 10/17/2017 Letter from Joyce C.H. Tang to Glenn Leon Guerrero  
26 regarding the "Korando Corporation/Bile & Pigua Bridge  
27 Reconstruction Project, Project No. GU-NYH-NBIS (007)."

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1 II. ARGUMENT

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3 **A. Guam Law Requires DPW to Provide a Procurement Record *Relevant to this Appeal*.**

4 2 GAR Div 4 §12104(c)(3) provides in relevant part as follows:

5 (3) The Chief Procurement Officer, the Director of Public Works, or the head of a  
6 Purchasing Agency shall submit to the Public Auditor a complete copy of the  
7 procurement record *relevant to the appeal* within five (5) working days of receiving  
8 notice of an Appeal, in chronological order where practicable, numbered sequentially,  
9 tabbed, and indexed to identify the contents.

10 2 GAR Div 4 §12104(c)(3) (emphasis added). Further, Section 12105(e) requires that DPW submit as  
11 part of its Agency Report, *if not already submitted as part of the procurement record required by*  
12 *§12104(c)(3)*, the following:

13 (e) Any other documents which are relevant to the protest; including the contract, if  
14 one has been awarded, pertinent amendments, and plans and drawings[.]

15 2 GAR Div 4 §12105(e). Neither the Procurement Record submitted on January 24, 2018 nor the  
16 Agency Report submitted on February 6, 2018, contains a single communication, memorandum, or  
17 report within DPW or between DPW and another party relevant to the subject of Korando's protest.  
18 Prior to denying Korando's claims, a proper review would involve an analysis and recommendation  
19 provided to Mr. Leon Guerrero, the Director of DPW, regarding Korando's claim. DPW has not  
20 provided any documents relating to Korando's claim, as identified in Section I above. DPW is  
21 required, under Guam law, to produce internal communications, reports, analysis and documents that  
22 explaining the basis for its denial of Korando's claim, and any supporting documentation detailing  
23 the analysis performed of the claim are relevant to the allegations and claims raised in this Appeal.  
24 Guam law requires DPW to produce this information as part of the procurement record and in its  
25 Agency Report pursuant to 2 GAR Div 4 §§ 12104(c)(3) and 12105(e), respectively. Notably, DPW  
26 has not supplemented the procurement record at any time in an effort to comply with Guam  
27 Procurement Law.

28 Accordingly, Korando respectfully requests that the Public Auditor and Hearing Officer order

1 DPW to comply with the requirements of 2 GAR Div 4 §§ 12104(c)(3) and 12105(e) and supplement  
2 the Procurement Record in this matter with all material relevant to this Appeal, including but not  
3 limited to any documents, emails and correspondence related to the communications identified above.

4 **B. Enlargement of Time to File Comments to Agency Report and Other Motions**

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6 Because DPW has failed to comply with Guam Procurement Law requiring it to produce a  
7 complete procurement record and Agency Report, Korando cannot fully respond to DPW's Agency  
8 Report, or fully evaluate and assess whether additional motions are necessary. For this reason,  
9 Korando requests that it be granted additional time to respond to the Agency Report, presently due on  
10 February 16, 2018, and to file additional motions as necessary. Until such time as DPW produces a  
11 complete procurement record, Korando cannot anticipate the volume of the pending material, and  
12 cannot determine what length of time would be appropriate for Korando to submit its Comments to  
13 Agency Report or further motions. For this reason, Korando requests a status hearing to determine  
14 whether DPW has complied with its obligations to produce a full procurement record, the volume of  
15 such record, the length of time necessary for Korando to review such record, and the appropriate  
16 length of time for Korando to file its Comments to Agency Report and further motions.

17 Dated this 9<sup>th</sup> day of February, 2018.

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19 **CIVILLE & TANG, PLLC**

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