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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: April 6, 2017

TIME: 4:44  AM  PM BY: FOJ

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**

**DECLARATION OF WILLIAM M.  
FITZGERALD**

14  
15  
16  
17 I, **WILLIAM M. FITZGERALD**, hereby declare that:

18 1. I am counsel of record for Appellant Korando Corporation ("Korando"), and submit  
19 this declaration in support of Korando's Reply Memorandum in Support of Motion to Compel,  
20 Extend the Time to File Comments to Agency Report and Other Dates and for Sanctions.

21 2. I have personal knowledge of the facts set forth herein, and if called upon to testify, I  
22 would and could competently testify thereto.

23 3. On February 1, 2018, the US Department of Transportation Federal Highway  
24 Administration produced Thirty-One (31) email communications pursuant to the Freedom of  
25 Information Act, 5 USC § 6103. These emails were variably sent and received by a number of  
26 individuals, including Richelle Takara (FHWA), Tom Keeler (OAG), Mr. Leon Guerrero (DPW),  
27 Joaquin Blaz (DPW), Rob Weinberg (OAG), Linda Hernandez (OAG), Buster Anderson (PTG), Tom  
28

1 Sterling, Felix Benavente (DPW), Michael Lanning (PTG), Jeff Wilson, Derrick Lehman (PTG),  
2 Gene Niemasz (PTG), David Yao (PTG), Jeff Miller (TG Engineers), Isidro Duarosan (DPW),  
3 Crispin Bensan (DPW), Jolyn Aquiningoc (DPW), Taralyn Santos, and Mr. Moretto (PTG).  
4

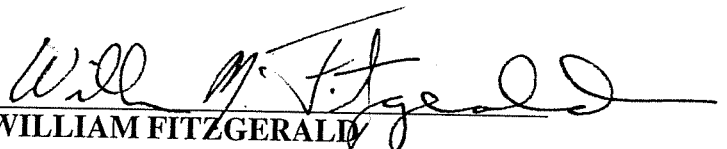
5 4. All 31 email communications were related to either the December 16, 2015 Stipulation  
6 and Order executed by the Department of Public Works and Korando, Korando's October 18, 2016  
7 Change Order or DPW's November 15, 2017 Denial of Korando's Change Order.

8 5. None of the emails were submitted by DPW as part of the procurement record in this  
9 matter.

10 6. Attached as Exhibit A is a true and correct copy of the June 11, 2017 email  
11 communication from Michael Lanning (PTG) to John Moretto (PTG) and Richelle Takara (FHWA)  
12 re: RE: Korando Termination Claim – question.  
13

14 I declare under penalty of perjury under the laws of Guam that the foregoing is true and  
15 correct.

16 *Respectfully submitted* this 6<sup>th</sup> day of April, 2018.

17  
18   
19 WILLIAM FITZGERALD

# **EXHIBIT A**

**From:** [Lanning, Michael](#)  
**To:** [Moretto, John](#); [Takara, Richelle \(FHWA\)](#)  
**Subject:** RE: Korando Termination Claim - question  
**Date:** Sunday, June 11, 2017 1:54:05 PM

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Richelle....sorry. Got behind on my emails.

Item 1.1 and 1.2

Yes this is for the same piece of equipment. It was for their original mobilization of the pile hammer which was not demobilized from Guam. Since they did not demobilize the equipment then remobilize it again this charge is outside of 5a in the stipulation and order.

The excavator should have been included as a demobilization cost since it was used for the project in the staging Korando's staging area for the project. We will make the change.

The field office –

Since this is a bid item, I guess this would be an interpretation of what “, and any other expenses related to the termination and delay of the Project.” means in 5a of the stipulation and order. It is our recollection from the meeting that we had last December, the decision was made to not pay for the field office. It would be up to DPW to give some additional direction if it should be included or not. 60-Percent of the field office was paid on Korando's progress payment 2. Note that when the project was restarted the field office ended up at a different location than the original one prior to termination.

Staging area –

Going back to the December meeting again, the discussion on this item that it was going to be included up to the termination date.

Service vehicles –

These are Korando's overhead costs. It would be reasonable that these costs are associated with and incidental to other items of work or even possibly part of their mobilization item. Korando was paid up to 75 percent of their mobilization item on their progress payment 2.

The overall philosophy we took was to only pay for demobilization/remobilization costs. We were provided direction as to what other expenses should be reasonably included. From your questions below, it seems to me there's a need to go over Korando's claim items again. Quite possibly Glenn/Kin/Tom may want to take a different approach on potentially allowable costs as related to “other expenses” in the stipulation and order.

Mike

**From:** Moretto, John  
**Sent:** Monday, June 12, 2017 9:17 AM  
**To:** Takara, Richelle (FHWA) <Richelle.TAKARA@dot.gov>  
**Cc:** Lanning, Michael <Michael.Lanning@parsons.com>

**Subject:** RE: Korando Termination Claim - question

Richelle,

I will check with Mike and get back to you by COB today.

I was not aware of this specific email. I reviewed a response letter regarding the Bile/Pigua termination claim from Tom Keeler and Mike, this is in reference to that letter.

Regards,

John Moretto

**From:** Takara, Richelle (FHWA) [<mailto:Richelle.TAKARA@dot.gov>]

**Sent:** Saturday, June 10, 2017 3:40 AM

**To:** Lanning, Michael <[Michael.Lanning@parsons.com](mailto:Michael.Lanning@parsons.com)>; Moretto, John <[John.Moretto@parsons.com](mailto:John.Moretto@parsons.com)>

**Subject:** FW: Korando Termination Claim - question

I don't think I saw a reply on this email... If you did, please let me know.

**From:** Takara, Richelle (FHWA)

**Sent:** Monday, June 05, 2017 11:29 PM

**To:** 'Lanning, Michael' <[Michael.Lanning@parsons.com](mailto:Michael.Lanning@parsons.com)>

**Cc:** Glenn Leon Guerrero ([glenn.leonguerrero@dpw.guam.gov](mailto:glenn.leonguerrero@dpw.guam.gov))

<[glenn.leonguerrero@dpw.guam.gov](mailto:glenn.leonguerrero@dpw.guam.gov)>; 'Kin Blaz, DPW Administrator [[joaquin.blaz@dpw.guam.gov](mailto:joaquin.blaz@dpw.guam.gov)]' <[joaquin.blaz@dpw.guam.gov](mailto:joaquin.blaz@dpw.guam.gov)>

**Subject:** RE: Korando Termination Claim - question

Mike:

The following are questions that we have:

- Is item 1.1 and 1.2 for the same piece of equipment? If it is, was this piece of equipment used for the on-going construction project? If it was not use on the on-going project, and it appears that Smithbridge didn't send it back to Australia so they may have used it on other projects or have plans to use it, so the cost to ship it from Australia to Guam would not be eligible under this claim?
- Why are we agreeing to pay for he backhoe and compactor and not the excavator?
- For the field office, why are we not paying for the land rental from July 15 (Termination date) to the end of their lease or restart? Is this the one that doesn't really have a lease on the land?
- For the staging area, why is this being treated different (eligible) than the field office? The staging area is for the duration then were under contract prior to the termination, was this not included in prior pay applications?
- Service Vehicle – Was this cost already in the items we agreed to pay in the pay apps?

What is the philosophy behind what we are paying for and not paying for? For example, if a piece of

equipment was mobilized for the original contract and then the on-going contract, we are we paying for? If we paid for an item in the pay applications for the original contract, we are not paying for it again under the claim?

This would be concepts that Glenn could explain. Put into our words instead of the way they presented the information.

You don't have to explain the WFIC costs... we have the philosophy on that item figured out.

Richelle

**From:** Lanning, Michael [<mailto:Michael.Lanning@parsons.com>]

**Sent:** Monday, June 05, 2017 1:28 PM

**To:** Takara, Richelle (FHWA) <[Richelle.TAKARA@dot.gov](mailto:Richelle.TAKARA@dot.gov)>

**Subject:** Korando Termination Claim

Richelle,

Attached is the draft response to the claim submitted by Korando for the termination on the Bile/Pigua project. I have also included Korando's claim for your reference. When going through the letter please note that some of the amounts listed don't match with the amounts in Korando's claim. This is due to supplemental information that was obtained from Korando during the claim review.

On page 4 of the letter (item 6) this was added by Tom. Our opinion is that this is not related to the OPA stipulation and order.

Mike