

ORIGINAL

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PROCUREMENT APPEALS

DATE: 11/23/2015

TIME: 4:15 AM PM BY: MSB

FILE NO OPA-PA: 15-009

IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

DOCKET NO. OPA-PA-15-009

Korando Corporation,

Appellant.

**KORANDO CORPORATION'S REPLY
MEMORANDUM IN SUPPORT OF ITS
MOTION FOR DISCOVERY**

On November 13, 2015, DPW filed its *Reply to Korando Corporation's Request for Discovery*, which was incorrectly titled a reply, when it was meant to be an Opposition Memorandum to Korando's Motion for Discovery ("DPW Opp.").

Korando Corporation ("Korando") hereby submits its reply to DPW's opposition memorandum.

A. DPW Cannot Shift Its Responsibility to Produce Documents.

Throughout DPW's Opp., DPW attempts to shift responsibility for DPW's discovery, response to Sunshine Act requests, and production of the procurement record from to Parsons Transportation Group ("PTG"), which is not a party in this action. These are clearly transparent attempts to delay and avoid production of documents needed by Korando to prosecute this action, to create a conflict to bolster DPW's Motion to Disqualify Civile &

Tang, and to avoid a hearing on the merits of this case.

As noted in Mr. Keeler's numerous emails, his default response to follow up requests for production of documents was that the documents requested were not relevant, and because it was a burden on PTG. See Exhibit A 10/7/15Email.

First, the Sunshine Act does not give DPW the discretion to determine which documents are relevant and should be produced. Nowhere in the statute does it allow for an agency to exempt or refuse to produce on the grounds of relevance. The Sunshine Act, which is Guam's equivalent of the Freedom of Information Act, serves to "ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NRLB v. Robbins Tire & Rubber Co.*, 437 US 214, 242 (1978). To allow Mr. Keeler or any individual at DPW to determine what is relevant in response to a Sunshine Act request, especially where the allegations of bad faith termination are directed to the very parties who were involved in the decision making process to terminate Korando, would erode the heart and purpose of the Sunshine Act. Accountability of public officials requires transparency. Only when there is full and complete compliance with the Sunshine Act can there be transparency.

Secondly, Korando has directed its Sunshine Act Requests to DPW—not PTG. Indeed, it would be impossible to direct such a request at PTG, as it is not a government agency. The fact that PTG was and is the repository for DPW's highway and bridge projects funded by federal funds, does not change the fact that PTG is not a party to this litigation. The legal duty to produce a complete procurement record and respond to Sunshine Act Requests lies with DPW and DPW alone. Even if DPW has outsourced this work to a third party, DPW is ultimately responsible for what is produced.

Mr. Keeler's response to the Exhibit J email supports Korando's belief that intervention from the Hearing Officer is necessary to get DPW to produce documents. Counsel for Korando informed Mr. Keeler on November 5, 2015 that Korando had not previously received **Exhibit J** produced for the first time in DPW's *REBUTTAL TO Korando's Response to Agency Report*. See **Exhibit B** *11/5/15 Email Exchange*. Mr. Keeler's immediate response was not to verify whether Exhibit J had previously been produced, but rather to suggest that it had been produced and Korando simply had not found it yet:

I have not even begun to review the plethora of materials produced in response to your 4 FOIA Request and as such was not aware that you were not provided the information contained in DPW's Rebuttal Exhibit J that documents Stanley's efforts to assist Korando. Frankly I assume the information was provided but that you also have not had time to review all the materials produced.

Exhibit B *11/5/15 Email Exchange*.¹ By Mr. Keeler's own admission, he did not look into the issue of the missing emails until *after* Korando filed its Request for Discovery. Mr. Keeler subsequently confirmed that Exhibit J was not produced previously to Korando.

DPW continues to rely on its argument that Korando's Fourth Sunshine Act Request was unreasonable and unrelated to Korando's appeal, and that Korando unreasonably refused to modify its request. See **Exhibit C** *Korando's 10/5/15 Sunshine Act Request*. This is not true. In fact the Sunshine Act Request was much narrower than DPW represented in DPW's Opp., and the information requested is directly related to the present appeal. However, in order to reduce the burden on DPW, Korando's counsel attempted to meet and confer with DPW's counsel regarding the scope of the Sunshine Act Request. DPW's counsel refused several requests to meet and confer, and only agreeing to meet after

¹ The Exhibit J email was not responsive to the Fourth Sunshine Act Request as Mr. Keeler suggested; it was responsive to Korando's first Sunshine Act Request on August 10, 2015.

Korando's third request for a meet and confer after it was copied to Attorney General Barrett Anderson. *See Exhibit D 10/26/15 Email Exchange.* DPW cannot blame Korando for the delay caused by DPW's initial refusal to discuss the scope of the Sunshine Act Request.

During the telephonic meet and confer held on November 1, 2015, Korando agreed to narrow the requests based on the suggestions made by DPW. Contrary to DPW's claim that Korando seeks "all correspondence and documents for all FHWA funded projects since 2010," Korando is in fact only seeking three documents for each project: (a) the Construction Change Order Log, (b) the Final Acceptance Checklist, and (c) the Final Change Order. In addition, at DPW's request, Korando limited its request to construction projects excluding islandwide projects. There can no longer be any argument that the request is unduly burdensome.

DPW produced its most recent response on November 19, 2015, six (6) weeks since Korando's initial request and over two weeks after Korando modified its request pursuant to the meet and confer. This is a blatant violation of the Sunshine Act, which requires that documents be produced within four (4) working days of the request. *See* 5 GCA §10103. After Korando modified its request, DPW was required to produce documents (or request a 10-day extension) on Friday, at November 6. Korando is reviewing the most recent set of documents to determine whether or not it is a complete response. Korando requests discovery because it has become clear that DPW will not respond in a timely manner without intervention from the OPA.

2. DPW's Procurement Record Is Not Complete.

DPW's Reply only addresses the Sunshine Act Responses; DPW has not addressed

Korando's request that DPW augment the Procurement Record to include *all* relevant documents. In its Preliminary Agency Response and Agency Statement, DPW claimed that it had produced all relevant documents. This is not true. In addition to Exhibit J, Korando received a number of Sunshine Act documents which DPW did not make part of the Procurement Record. If DPW discovers relevant documents in a response to a Sunshine Act Request, it is required to include those documents in the Procurement Record. Because DPW's Reply did not respond to the request that DPW be required to augment its Procurement Record, Korando considers this issue to be unopposed.

CONCLUSION

Based on the foregoing, Korando seeks an order permitting discovery and an order requiring DPW to supplement the Procurement Record.

Respectfully submitted this 6th day of November, 2015.

CIVILLE & TANG PLLC



Joyce C.H. Tang
Attorneys for Korando Corporation

EXHIBIT A

Sara Fitzpatrick

Subject: FW: Sunshine Act Request

From: Tom Keeler <tpkeeler@gmail.com>

Sent: Wednesday, October 7, 2015 3:09 PM

To: Joyce Tang

Reply To: tpkeeler@gmail.com

Cc: Glenn LeonGuerrero; Felix Benavente; joaquin.blaz; Ken Orcutt; Karl P. Espaldon; Rob Weinberg

Subject: Re: Sunshine Act Request

Joyce,

DPW's Director has requested that I write you concerning your 2 most recent FOIA requests served on him, one of which includes a request for a vast volume of contract documents and materials concerning all Federal Highway Administration (FHWA) projects for the past 5 years. These requests are of serious concern as they appear to have little, if any, relationship to Korando Corporation's (Korando) breach of contract appeal to the Office of Public Accountability (OPA Appeal). Forcing DPW to respond to the FOIA requests is unreasonable as 1) there is no evidence the requested items are related to Korando's OPA Appeal; and 2) the requests are unreasonable and impose a substantial burden on the department and its consultants, Parsons Transportation Group (PTG). Accordingly, you are requested to resubmit the 2 FOIA requests narrowing the request to matters reasonably related to the OPA Appeal.

In any event, it is obvious that DPW and PTG are not able to respond to the 2 latest FOIA requests within 4 working days as required by 5 GCA Section 10103(d). Frankly it is not possible to respond within 10 calendar days as required by subsection (e). I spoke to PTG's Mike Lanning yesterday who was unable to estimate when PTG would be able to furnish the documents to DPW for the director to formally respond to you. He also expressed concern with the staff and resources needed to respond to the latest FOIA requests. The bottom line is DPW will provide the documents as soon as reasonably possible.

I also want to respond to your requests to coordinate on the scheduling of depositions. Stanley Consultants is not cooperating with DPW. I am informed that Stanley is represented by Elyze Iriarte of Carlsmith who you can follow-up directly. The director is trying to contact DPW's former director Carl Dominguez however has had difficulty getting a hold of him and isn't certain if he is on island. I'll touch base when I know more. As for scheduling Mr. Lanning's deposition I suggest you contact PTG's local counsel, Patrick Civile of Civile & Tang.

I only learned yesterday that your firm has represented PTG since the fall of 2014 and fail to understand how your office is able to represent Korando in the OPA Appeal. PGT provides a large array of services on FHWA Projects that requires that it work directly with DPW on a daily, if not hourly, basis. That Korando's OPA Appeal is in direct conflict with PGT's interests is not subject to debate, as is evidenced by your request to depose Mr. Lanning in an adversarial setting and the fact that your unreasonable and overly burdensome FOIA requests adversely impact DPW's operations as well as PTG's day to day operations and its ability to perform the job it was hired to do to, assist DPW on FHWA projects.

In closing, you are respectfully requested to resubmit the October 5, 2015 FOIA requests narrowing the scope to matters reasonably related to the OPA Appeal. It also seems appropriate that your firm office revisit the propriety of representing Korando, which appears to be in actual conflict with its representation of PTG.

Please contact me if you have any questions.

Sincerely,

Tom Keeler

On Mon, Oct 5, 2015 at 1:29 AM, Joyce Tang <jtang@civilletang.com> wrote:

Dear Glenn,

Please find attached two separate Sunshine Act requests for information.

Thank you.

Joyce

Joyce C.H. Tang

Civille & Tang, PLLC

T: [671.472.8868](tel:671.472.8868)

F: [671.477.2511](tel:671.477.2511)

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EXHIBIT B

Sara Fitzpatrick

Subject: FW: DPW & Korando OPA Appeal

From: Tom Keeler <tpkeeler@gmail.com>
Sent: Friday, November 6, 2015 5:28 AM
To: Joyce Tang; Rob Weinberg
Reply To: tpkeeler@gmail.com
Cc: Glenn LeonGuerrero; joaquin.blaz; Linda Hernandez
Subject: Re: DPW & Korando OPA Appeal

Joyce,

Similar to your umpteenth request that DPW's Director reconsider his decision to terminate Korando I once again (this is closing in the 10th time or so) instruct (i.e., not ask) you to limit responses to Attorneys only. I have repeatedly instructed you to do so and remain baffled by your need to "reply to all". Please work on limiting responses to Rob and me. Rob and I can then coordinate with DPW, Parsons Transportation Group (Civille & Tang's other client), AG staff and others as WE deem appropriate.

I have not even begun to review the plethora of materials produced in response to your 4 FOIA Request and as such was not aware that you were not provided the information contained in DPW's Rebuttal Exhibit J that documents Stanley's efforts to assist Korando. Frankly I assume the information was provided but that you also have not had time to review all the materials produced. Exhibit J was not redacted as claimed, I only cited the sections considered pertinent. I will forward on what I have shortly.

You recently (FINALLY) narrowed the scope of your 4th FOIA Request but are now questioning whether I reviewed the DPW/GovGuam's servers. The simple answer is no, nor do I intend on doing so. Whether such is appropriate with respect to a standard request is one question however I believe such unnecessary with respect to DPW Highways Division and your current request. In this respect it appears I haven't done a good job (actually I think I have) of describing the structure of the Guam Transportation Program. The GTP is structured such that Parsons Transportation Group, whose *only* client is DPW, handles all FHWA related matters, both administrative and overseeing of construction management on FHWA's funded construction projects such as the Bile/Pigua Bridge Reconstruction Project, Route 4 Widening Resurfacing (the Project Pat represents PTG on), etc. Thus, all communications to a construction manager such as Stanley go through Parson Transportation Group. DPW does not communicate directly with groups such as Stanley and as such there is no reason to review servers.

Once again no one questions your legal right to submit FOIA's requesting information that no reasonable person would consider reasonably related to Korando's termination. Indeed, DPW and Parsons Transportation Group have and continue to devote an unreasonable amount of resources to respond to your 4th Request. DPW's Director is off island however I will review your latest request that GovGuam and DPW's servers be reviewed upon his return to the office. I personally don't consider such necessary but that is his decision. If however he elects to entertain your request it will require Civille & Tang's client Parsons Transportation Group to assign a 3rd and possibly a 4th staff member to do the work.

As for the threat to file a motion to compel, just do it. DPW is acting in good faith in responding to your debilitating 4th FOIA Request however if you question that take it to court. Just understand the person you will

be cross examining for failure to respond in a timely manner will most likely be Mike Lanning of Parsons Transportation Group.

Thanks.

Tom

On Thu, Nov 5, 2015 at 12:51 AM, Joyce Tang <jtang@civilletang.com> wrote:

Tom –

I am traveling at the moment, hence, the late response.

I have the following response to your email:

1. The Sunshine Act does not limit the scope Korando's requests to your view of Korando's case. What you believe is relevant to Korando's appeal has no bearing on DPW's obligations under the Sunshine Act. The Sunshine Act was designed to provide full transparency and allow the public access to Government operations and information. Korando was wrongfully terminated by DPW and in order to defend itself, it requires information which is otherwise not available. It should not be penalized or harassed for availing itself of its rights under the Guam Sunshine Act and the Open Government Law.

2. With regard to Korando's 8/10/15 Sunshine Act Request, Korando requested all communication and documents regarding the Revised Phasing Plan, extensions/changes in completion date of the project, termination, and any communication with FHWA. Your email below states you have provided "all communication", which I understand to mean DPW has produced all documents provided to Korando on 8/21/2015.

I take issue with your representation that DPW has produced all responsive communications requested in Korando's 8/10/2015 because it is not an accurate statement. For example, on October 28, 2015, DPW filed its Rebuttal to Korando's Comments, and attached a *redacted* copy of Exhibit J which was a chain email from Jack Marlowe dated early June regarding the Alternate Phasing Plan. Exhibit J was not produced on 8/21/15, or any time after that. The first time I saw Mr. Marlowe's June 2015 chain email was on 8/28/2015 when DPW's Rebuttal was filed.

I would also like to know why Ex. J was redacted, and if DPW will be providing an unredacted copy.

3. In connection with Korando's Sunshine Act requests, generally, can you confirm whether you have checked DPW / GovGuam servers where all GovGuam email communication are stored for responsive documents or correspondence? Have you asked GovGuam IT to search these documents in GovGuam servers? I also have seen DPW employees, including you, use personal email.

I would like to avoid filing a motion to compel and welcome any suggestions on how to obtain these documents.

Regards,

Joyce

From:

EXHIBIT C

CIVILLE & TANG, PLLC

www.civilletang.com

Sender's Direct E-Mail:
jtang@guamattorneys.com

October 5, 2015

VIA E-MAIL

Mr. Glenn Leon Guerrero
Director
GUAM DEPARTMENT OF PUBLIC WORKS
542 North Marine Corp Drive
Tamuning, Guam 96913

Re: ***Sunshine Act Request to DPW regarding DPW Federal Highway Funded Projects***

Dear Glenn:

Korando Corporation requests, pursuant to the Guam Sunshine Act set forth at 5 G.C.A. §10101 *et seq.*, copies of the following:

1. The following documents for each federally-funded DPW highway project from 2010 to October 5, 2015:
 - a. Notice of Award
 - b. Contract, and any amendments or modifications to the Contract.
 - c. Notice to Proceed
 - d. Final or Last Payment Application
 - e. Any Notice of Completion
 - f. Final or Last Submittal Log
 - g. Any DPW reports relating to progress on each of these projects.
2. All documents in the Sharepoint server for Project No. GU-NH-NBIS(007).
3. All minutes, records, or documents related to the May 6, 2015 meeting referenced in Tom Keeler's May 7, 2015 email to Glenn Leon Guerrero, Joaquin Blaz, Joy Jean Mantanona, Michael Lanning, Anderson Butler, Joseph Pecht, and Jack Marlowe.
4. All minutes, records, or documents related to the May 15, 2015 meeting between representatives of DPW, Parsons Transportation Group, Korando, and Stanley Consultants.

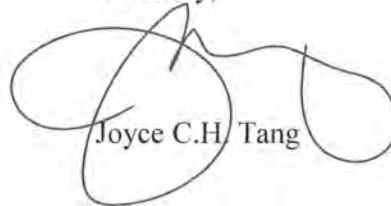
Mr. Glenn Leon Guerrero
October 5, 2015
Page 2

5. All written communication, including but not limited to electronic mails, reports, pleadings, appraisals, letters, and hand written notes related to any property condemned in connection with the Bile & Pigua Bridge Reconstruction Project, Project No. GU-NYH-NBIS(007).

If any of the foregoing documents or information are exempt from disclosure, please release the non-exempt portions. My client agrees to pay reasonable fees incurred in the copying of these documents. If you are able to provide the copies electronically, that would be greatly appreciated.

Please do not hesitate to contact me at 671-472-8868 if you have further questions or comments.

Sincerely,



Joyce C.H. Tang

EXHIBIT D

Sara Fitzpatrick

Subject: FW: etter Re: Korando Corporation vs. DPW

-----Original Message-----

From: Tom Keeler [mailto:tkeeler@guamag.org]

Sent: Friday, October 30, 2015 8:34 PM

To: Joyce Tang; Ken Orcutt; Karl P. Espaldon; Linda Hernandez

Subject: RE: etter Re: Korando Corporation vs. DPW

Joyce,

Sorry for not responding earlier today however DPW's Highway's Division's, where I am primarily based out of, Internet system was down. Out of a desire to reply to you as soon as reasonably practical, I swung by the office this evening on the way home to send this response

It isn't clear to me why you are perplexed with my having to coordinate with DPW's Director/Management. Nonetheless it is good to see that 2, nearly 3 weeks, since being placed on notice of the overly burdensome and unreasonableness of Korando's FOIA requests that it is finally an item that warrants your attention.

Anyway, I will make myself available as much as possible to accommodate your schedule. I can confer via phone between 2 and 4 pm tomorrow or between 7 to 9pm. I am also available, assuming provided reasonable advance notice, to meet and/or confer via phone, on Sunday from 9am to 5pm. Finally, I am also available Monday, a GovGuam holiday, between 3 and 6pm.

My direct line at work is 649-3152, the cell, 486-0577. Thanks.

Sincerely,

Tom Keeler

From: Joyce Tang [mailto:jtang@civilletang.com]

Sent: Friday, October 30, 2015 9:10 AM

To: Tom Keeler; Ken Orcutt; Karl P. Espaldon; Linda Hernandez

Subject: RE: etter Re: Korando Corporation vs. DPW

Tom -

I am perplexed as to why it is necessary to consult with the director

regarding the meet and confer to discuss scope of the Sunshine Act Requests, when in his letter he specifically asks Korando to withdraw or narrow the requests. See attached letter 10/23/2105. Korando is willing to do so via a meet and confer by telephone or in person since Monday, but has not received a definitive response from DPW regarding the meet and confer.

I am available this afternoon for the meet and confer.

As for copying AG Barrett Anderson, it was out of professional courtesy as the initiating letter (see attached) was copied to her.

Regards,

Joyce

-----Original Message-----

From: Tom Keeler [mailto:tkeeler@guamag.org]
Sent: Friday, October 30, 2015 7:47 AM
To: Joyce Tang; Ken Orcutt; Karl P. Espaldon; Linda Hernandez
Subject: RE: etter Re: Korando Corporation vs. DPW

Joyce,

I responded yesterday advising that the director was off Wednesday for his birthday and that I was not able to meet with him yesterday as he was in the field most of the day. As noted in that response I expect to meet with him today to review your request. I expect to get back to you later today.
Thanks.

Also, I don't understand the need to cc the AG on emails of this nature but that is your call. My practice is to not include her on my replies but instead to cc the Chief Deputy and Solicitors Deputy.

Tom

From: Joyce Tang [mailto:jtang@civilletang.com]
Sent: Thursday, October 29, 2015 5:03 PM
To: Tom Keeler
Cc: Elizabeth Barrett-Anderson
Subject: RE: etter Re: Korando Corporation vs. DPW

Dear Tom,

This is my third request to meet and confer regarding the scope of Korando's Sunshine Act Requests. I am available to meet in person or by telephone conference. Korando would like to discuss what information it needs and the best way to obtain the information, while reducing the burden and cost on DPW. I have not received a direct response from you regarding this

request. Please confirm whether DPW is willing to meet and confer.

Sincerely,

Joyce

From: Joyce Tang [mailto:jtang@civilletang.com]
Sent: Wednesday, October 28, 2015 6:19 PM
To: tkeeler@guamag.org
Cc: ebanderson@guamag.org
Subject: RE: etter Re: Korando Corporation vs. DPW

Dear Tom:

I take exception to your inaccurate representations to the OPA and in your correspondence regarding the scope of Korando's Sunshine Act requests. You complain that Korando has asked for irrelevant documents, and all documents relating to federal highway projects from 2000 to 2015. This is false. A copy of my 10/5/2015 Sunshine Act request is attached. The first request, which is the request at issue, asks for a very limited number of documents:

[cid:image001.png@01D1126B.3421B540]

As you can see, I identified the seven (7) specific categories of documents that I am seeking for each federally funded highway project. They are relevant to Korando's claim of pretextual termination, and defense to DPW allegations regarding Korando delays to the project as follows:

1. That Korando was not diligent in obtaining the building permit following the issuance of the Notice of Intent to Award and the Notice to Proceed. See DPW's Rebuttal filed 10/28/2015 at 4.
2. "Korando's efforts in obtaining the Building Permit were so substandard that it failed to retain an archaeological consultant until January 20, 2015, or fifteen days after issuance of the NTP." Id.
3. Korando failed to commence any meaningful work or progress on the Project. Id. at 9.

I responded to your email regarding the scope of the request for federal highway project documents in my email below dated 10/26/2015, and asked to meet and confer regarding the scope, but you have not responded. If you think our request is overbroad and involves exceptional cost to respond to, then you have a duty to meet and confer in good faith for the purpose of

determining the scope of the request can be narrowed.

You also incorrectly represent in DPW's Motion to Disqualify ("Motion to Disqualify") our firm filed with the Court today the following:

1. You represent to the OPA in your Motion to Disqualify that Korando's Sunshine Act Requests are "admittedly of no use to Korando." This is simply not true. At no time has Korando stated that the documents requested are of no use of Korando. In fact, many of these³ have been used to establish that there have been similar delays caused by DPW and Stanley, the termination was pretextual, there were similar delays on most other highway projects that did not result in termination. To be clear, we have only requested documents that we believe, in good faith, are relevant to Korando's claims and defenses. Having said that, you are certainly aware that DPW's claim of lack of relevance is not an excuse for not producing public documents under the Sunshine Act.

2. "[AAG] Keeler has made a number of requests noting Civile & Tang's FOIA Request appears unrelated to Korando's OPA Appeal, but instead appears to be motivated solely to harass DPW and government operations, and has requested that they be withdrawn and resubmitted with the scope of inquiry narrowed to the matter in dispute." This is patently untrue. Had you or DPW made this statement, you can be sure that Korando would have refuted immediately. Again, Korando is under no obligation to limit its requests under the Sunshine Act, although in fact it has.

3. You claim that Korando has failed to respond to its requests that Korando narrow its scope of Sunshine Act Requests. This too is patently untrue. My email of 10/26/2015 below to you which was copied to AG Barrett Anderson, sent two days ago specifically addressed this very concern. I also stated that I believed you have misconstrued the scope of the Sunshine Act Request with respect to the federal highway projects in my 10/5/2015 requests, and asked to meet and confer. To date, you have not responded to my request to meet and confer, and instead filed this Motion with its misleading statements.

Under the circumstances, because you have a duty of candor to the Court, I request that you immediately correct your misstatements to the Court.

Sincerely,

Joyce Tang

From: Joyce Tang [mailto:jtang@civilletang.com]
Sent: Monday, October 26, 2015 9:44 AM
To: tkeeler@guamag.org<<mailto:tkeeler@guamag.org>>

Cc: ebanderson@guamag.org<mailto:ebanderson@guamag.org>

Subject: etter Re: Korando Corporation vs. DPW

Dear Glenn:

I know you are represented by counsel, so I am responding to your letter through DPW's counsel. I received your letter at 3 pm Friday afternoon, and did not have a chance to meet with Korando then. I will do so today. The amount of documents I'm requesting is quiet narrow, and think the request has been misconstrued. I am available today to meet and confer with your attorneys to discuss or clarify the scope of the request.

During the last hearing before the OPA, the hearing officer, Mr. Camacho, in response to a query that I made regarding documents to be produced in relation to the issues in this case, was that "all procurement documents are public records" and should, therefore, be accessible and provided to the OPA. In my cursory review of the electronic files produced last Friday (DPW's supplemental procurement record), it did not appear to include post-procurement documents relevant to the termination of the contract.

As you are aware, Korando has alleged that DPW's termination of Korando was pretextual, and through Stanley Consultants, Inc., made unilateral changes in the status of critical submittals that entitles Korando to an extension of at least 284+ days. Furthermore, the four separate instances of Stanley's deletion of records (the critical approved submittals) from the submittal log, is a matter that is not only relevant, but central to Korando's claims of wrongful termination. The whole issue of Stanley's deletion of matters from the procurement log, in federally funded highway project, is a matter of grave concern. Frankly, I am surprised at DPW's nonchalance regarding this misconduct. As stated in DPW's Report of Sept. 22, 2015, regarding the Stanley's deletion of submittal logs:

[[cid:image002.png@01D1126B.3421B540](#)]

To say that Korando "failed to raise a concern or object the practice, assumes that Korando was aware of the misconduct" assumes that Korando knew about Stanley's misconduct, which Korando did not, and attempts to shift the blame for the wrongdoing to Korando. This is not right. Korando only discovered Stanley's misconduct until after the termination, and brought it to DPW's attention. DPW's supplemental submission to the OPA on Friday in response to the OPA's sua sponte order to augment the record, does not include any post-award documents relating to this misconduct. These documents are clearly central and relevant to the OPA Appeal, and I believe will be required by the OPA. Please let me know if I have overlooked documents.

I've requested meetings on previous occasions, and was denied this request. I ask again to meet with you, your counsel and Attorney General Barrett-Anderson.

Sincerely,

Joyce Tang

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