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**OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS**

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| IN THE APPEAL OF | ) | <b>APPEAL NO. OPA-PA-16-002</b>            |
|                  | ) |  |
| 1-A GuamWEBZ,    | ) | <b>PURCHASING AGENCY'S</b>                 |
|                  | ) | <b>MOTION TO STRIKE</b>                    |
|                  | ) | <b>PAGES 3-6 OF APPELLANT'S</b>            |
| Appellant.       | ) | <b>OPPOSITION TO MOTION FOR</b>            |
|                  | ) | <b>EXPEDITIOUS DISPOSITION (DISMISSAL)</b> |
| _____            | ) | <b>ON THE MERITS</b>                       |

Purchasing Agency Guam Community College ("GCC") requests that the Hearing Officer strike pages 3 through 6 of Appellant 1-A GuamWEBZ's ("GuamWEBZ") Opposition to GCC's Motion for Expeditious Disposition (Dismissal) on the Merits ("Opposition"). As explained below, pages 3 through 6 of GuamWEBZ's Opposition should be stricken because these pages are an improper sur-rebuttal to GCC's Rebuttal regarding its Agency Report.

**PERTINENT PROCEDURAL BACKGROUND**

Pursuant to 2 GAR, Div. 4, § 12104(c)(3), GCC filed its Agency Report on April 12, 2016 that, as required by 2 GAR, Div. 4, § 12105(g), included its Statement Answering the Allegations of the Appeal ("Statement"). (See Agency Report at Tab 1 (Apr. 12, 2016).) Because GCC denied GuamWEBZ's bid protest as untimely rather than on the merits, the Statement addressed both the timeliness and the merits issues presented in GuamWEBZ's Appeal. (See *id.*) GuamWEBZ had until April 22 to file its Comments on the Agency Report. See 2 GAR, Div. 4, § 12104(c)(4).

**ORIGINAL**

Pursuant to the motions deadline set by the Hearing Officer (*see* Notice of Sched. Conf. and Mot. Filing Deadline (Apr. 8, 2016)), on April 15, 2016, GCC filed its Motion for Expeditious Disposition (Dismissal) on the Merits ("Motion") that requested dismissal *based only the merits issues* raised in GuamWEBZ's appeal — i.e., the Motion did not concede the timeliness issue but also did not raise it as a ground for dismissal. (*See* Purch'g Agency's Mot. for Exped. Dispos. (Apr. 15, 2016).) That same day, GuamWEBZ filed its Comments on the Agency Report ("Comments"), which addressed GCC's Statement. (*See* Appellant's Comments (Apr. 15, 2016).)

At the scheduling conference convened on April 18, 2016, the Hearing Officer advised the parties that he would soon issue a Scheduling Order, which would include a briefing schedule for the Motion.

Pursuant to 2 GAR, Div. 4, § 12104(c)(4), GCC filed its Rebuttal to GuamWEBZ's Comments on April 22, 2016 ("Rebuttal"). (*See* Purch'g Agency's Rebuttal to Comments (Apr. 22, 2016).) In its Rebuttal, GCC countered arguments made in GuamWEBZ's Comments, including arguments on the timeliness issue.

Although the Hearing Officer had not yet issued the Scheduling Order containing the Motion's briefing schedule, on April 25, 2016, GuamWEBZ filed its Opposition to the Motion. (*See* Appellant's Opp'n to Purch'g Agency's Mot. for Exped. Disp. (Apr. 25, 2016).) Despite the fact that the Motion requested dismissal on the merits — *i.e., it did not address the timeliness issue* — *GuamWEBZ's Opposition to the Motion* expends four pages arguing against the *Rebuttal's* timeliness arguments. (*See* Opp'n at 3-6.)

Pages 3 through 6 of GuamWEBZ's Opposition clearly are a response to GCC's Rebuttal, not its Motion. Because GuamWEBZ is not entitled to a sur-rebuttal for the Agency Report, pages 3 through 6 of its Opposition should be stricken.

#### **LEGAL STANDARD**

Under 2 GAR, Div. 4, § 12109(d), the Hearing Officer has the authority to “[r]ule on motions, and other procedural items on matters pending before such officer.” Thus, the Hearing Officer has powers akin to a court's inherent authority to strike improperly filed documents from its docket. *Cf. Ready Transp., Inc. v. AAR Mfg.*, 627 F.3d 402, 404 (9th Cir. 2010) (concluding that the courts' “inherent powers” include granting a motion to strike an improperly filed document because such “inherent powers are mechanisms for ‘control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases’”) (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991))).

As explained below, the regulations governing the procedure for the instant appeal do not allow a sur-rebuttal regarding the Agency Report. Therefore, the Hearing Officer should strike pages 3 through 6 of GuamWEBZ's Opposition.

#### **ARGUMENT**

Filings regarding the Agency Report are governed by 2 GAR, Div. 4, § 12104(c)(4) and 2 GAR, Div. 4, § 12105. Pursuant to § 12105, the purchasing agency submits with the Agency Report “a statement answering the allegations of the Appeal.” 2 GAR, Div. 4, § 12105(g). Once the Agency Report is filed, § 12104(c)(4) governs any subsequent filings regarding that Report:

*Comments on the agency report by an Appellant or an Interested Party, including testimony and evidence by any competing bidder, offeror or contractor of the Appellant, shall be filed with the Public Auditor within ten (10) days after the Public Auditor's receipt of the report, with a copy to the agency office that furnished the report. Any rebuttal an Agency may care to make shall be filed with the Public Auditor within five (5) working days after receipt by the Public Auditor of the comments to which rebuttal is directed, with a copy to the Appellant. Unsolicited agency rebuttals shall be considered if filed within five (5) days after receipt by the Public Auditor of the comments to which rebuttal is directed.*

2 GAR, Div. 4, § 12104(c)(4) (emphasis added).

While § 12104(c)(4) clearly provides for the Appellant's comments and the Agency's rebuttal, demonstrably absent is any provision allowing for the Appellant to respond to the Agency's rebuttal with a sur-rebuttal. Without question, pages 3 through 6 of GuamWEBZ's Opposition respond only to arguments presented in GCC's Rebuttal regarding the Agency Report. (*See, e.g.*, Opp'n at 3 ("GCC has since resurrected this argument in its Rebuttal. Thus, GuamWEBZ address the timeliness of its Protest herein."); *id.* at 3 ("On page 4 of its Rebuttal, GCC claims GuamWEBZ did not timely file it [sic] Protest[.]"); *id.* at 5 ("GCC's argument on page 4 of its Rebuttal"); *id.* at 5 ("GCC has truly spent quite a bit of time and everyone's money arguing GuamWEBZ's Protest was untimely.")). These pages therefore present a procedurally improper sur-rebuttal.

Accordingly, the Hearing Officer should strike pages 3 through 6 of GuamWEBZ's Opposition because these pages present a sur-rebuttal that is not permitted under the governing regulations.

**CONCLUSION**

For the foregoing reasons, GCC requests that the Hearing Officer strike pages 3 through 6 of GuamWEBZ's Opposition to the Purchasing Agency's Motion for Expeditious Disposition (Dismissal) on the Merits because these pages unequivocally are a sur-rebuttal, which is not provided for in the governing regulations.

After the Hearing Officer issues the Scheduling Order containing a briefing schedule for its Motion and pursuant to the dates set therein, GCC will file its Reply in response to the Opposition's arguments addressing the merits issues of GuamWEBZ's Appeal.

Respectfully submitted this 29th day of April 2016.

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By: \_\_\_\_\_

  
**REBECCA J. WRIGHTSON**