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FILE NO OPA-PA: 18-002

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

In the Appeal of  
  
Korando Corporation,  
  
Appellant.

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

**APPELLANT KORANDO CORPORATION'S  
MOTION TO COMPEL, EXTEND THE TIME  
TO FILE COMMENTS TO AGENCY  
REPORT AND OTHER DATES AND FOR  
SANCTIONS**

Appellant Korando Corporation ("Korando"), by and through its counsel, respectfully moves the Office of Public Accountability ("OPA") for an order compelling the Department of Public Works ("DPW"), an agency of the Government of Guam, to supplement the Procurement Record with the required relevant information relating to the issues in this Appeal, extending the time to file Korando's Comments to Agency Report and other dates, and for sanctions. Although the Hearing Officer previously granted Korando's Request to Supplement the Procurement Record on February 26, 2018, and DPW subsequently supplemented the Procurement Record on February 27, 2018 and March 2, 2018 with nearly ten thousand (10,000) pages of additional material, DPW has still failed to produce material that is relevant and central to the dispute in this Appeal. Accordingly, the OPA should order DPW to produce the missing documents, and sanction DPW for its failure to comply with the previous order and Guam Procurement Law.

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"). Korando filed its notice of appeal on January 16, 2017. On January 24, 2018, DPW  
6 filed its Procurement Record which included the following categories of documents: (1) Bid  
7 documents, (2) Authorization Letters for release documents to the IFB (and related documents), (3)  
8 Pre-Bid Conference Minutes, (4) Addenda, (5) Bid Analysis documents, and (6) Working Documents  
9 consisting of Hydarulic Analyses and a Geotechnical Report ("DPW Procurement Record"). The  
10 initial Procurement Record was incomplete because it did not contain all documents, emails, and  
11 correspondence regarding the issues in the Appeal, relating to DPW's review and ultimate denial of  
12 Korando's claims, its analysis of Korando's claims, and its interpretation of and compliance with the  
13 12/16/15 Stipulation.

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16 Based on the incomplete Procurement Record produced on January 24, 2018, Korando filed  
17 its Request for Supplementation of the Procurement Record and to Extend the time to File Comments  
18 to the Agency Report and Motion Cut-Off Date ("Request to Supplement Record") on February 9,  
19 2018. On February 26, 2018, the Hearing Officer issued a Decision and Order ("2/26/2018 D&O")  
20 granting Korando's Request to Supplement Record, ordering DPW to supplement the procurement  
21 record by February 28, 2018 and extending the deadline for Korando to file comments to the agency  
22 report to March 7, 2018. To date, DPW has filed five (5) supplements to the procurement record: (1)  
23 February 12, 2018, (2) February 21, 2018, (3) February 23, 2018, (4) February 27, 2018, and (5)  
24 March 2, 2018. The material produced consists of over Twenty-Four thousand (24,000) pages of  
25 material.  
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1 DPW has failed to comply with its obligations under Guam law and with the OPA's  
 2 2/26/2018 D&O. The following chart summarizes the types of material produced by DPW as part of  
 3 the Procurement Record in this Appeal:  
 4

| Date of Production                     | General Description of Documents   | Approximate Pages |
|--|--|-------------------|
| 1/24/2018 (initial Procurement Record) | <p><b>Pre-12/16/15 Stipulation documents relating to:</b></p> <p>Bid Documents; Authorization Letters and Approval; Pre-Bid Meeting Minutes; Bid Analysis and Recommendations; Working Documents such as Hydraulic Analyses and Geotechnical Report</p>  | 1,057             |
| 2/12/2018 Supplement                   | <p><b>Pre-12/16/15 Stipulation documents relating to:</b></p> <p>Purchase Orders;</p> <p><b>The following documents were generated in March 2016:</b></p> <p>Rating Reports; Structural Calculations; Repair Photos; Bridge Inspection Reports</p>   | 162               |
| 2/21/2018 Supplement                   | <p><b>Pre-12/16/15 Stipulation documents relating to:</b></p> <p>Task Orders; Invoices for Task Orders; Contract Documents; Amendments; Emails related to Task Orders, Meetings, Submittals, and Design</p> <p><b>Partial Emails post-12/16/15:</b><br/>         Emails originating from the inbox of Lynden Kobayashi, P.E., of Parsons Brinckerhoff, November 6, 2008 – January 25, 2018</p> | 5,779             |
| 2/23/2018 Supplement                   | <p><b>Pre-12/16/15 Stipulation documents relating to:</b></p>  | 7,808             |

|                      |  |       |
|----------------------|--|-------|
|                      | <p>Contract Administration Documents (Schedules, Status Reports, Structural Assessment Reports); Correspondence Logs 3/2015-7/2015; Letters regarding Schedule Delays; Nonconformance Reports 2014-2015; Deliverables (Drawings, Calculations, Cost Estimates); Letters re: Pre-Construction, Delays, Phasing Plan, and Extensions 2014-2015; Meeting Minutes 2014-2015; Inspection Reports and Truck Logs 2014-2015; Reports (Bulletin Board, Contractors Daily, Environmental, Inspectors Daily, Labor Compliance Interview, Monthly Apprentice Training, Weekly Construction) 2014-2015; Requests for Information/Clarification; Construction submittals 2014-2015; Design Deliverables</p> |       |
| 2/27/2018 Supplement | <p><b>Pre-12/16/15 Stipulation documents relating to:</b></p> <p>Abstracts of Title Reports; Easements; Deeds; Offer/Purchase Agreements; Death Certifications for previous owners; Appraisal Reports; Right of Entry Agreements; Correspondence 2014-2015; Stanley Invoices 2014-2015; Stanley Payments 2014-2015</p>   | 5,543 |
| 3/2/2018 Supplement  | <p>Change Orders, Correspondence, Weekly Construction Minutes, Field Revisions, Task Orders, IDIQ for Stanley Professional Construction Management Services</p>  | 4,342 |

1 Two months and over 24,000 pages of material later, DPW's Procurement Record is *still*  
2 missing any information, documents, emails, or other communications relating to DPW's review and  
3 ultimate denial of Korando's claims, its analysis of Korando's claims, and its interpretation of and  
4 compliance with the 12/16/15 Stipulation and Order to Rescind Termination. In its February 21, 2018  
5 Supplement to the Procurement Record, DPW submitted over Two Thousand, Seven Hundred  
6 (2,700) email communications that encompassed 2008-2018, approximately ten (10) years. However,  
7 the emails appear to have been sourced from the inbox of Lynden Kobayashi, P.E. from Parsons  
8 Brickenhoff, and primarily involved communications between Parsons Transportation Group,  
9 Parsons Brickenhoff, Duenas, Camacho and Associates, TG Engineers, and occasional responses  
10 from AAG Tom Keeler and FHWA representative Richelle Takara, limited to discussions regarding  
11 technical aspects of the Project. This "data dump" of emails still does not contain a single reference  
12 to DPW's analysis and ultimate denial of Korando's claims, its analysis of Korando's claims, and its  
13 interpretation of and compliance with the 12/16/15 Stipulation and Order to Rescind Termination. In  
14 fact, the emails produced do not even acknowledge submission of Korando's claim or DPW's  
15 subsequent denial of the claim. To be clear, DPW has produced copies of Korando's claim and  
16 DPW's response, and the attachments to each, but it has not produced any material related to DPW's  
17 decision-making process, its analysis of Korando's claim, or communications regarding how to  
18 respond to the claim.  
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21

22 The scope of documents and information required include all documents, emails, and  
23 correspondence regarding the following:

- 24 a. The 12/16/2015 *Stipulation and Order to Rescind Termination*.
- 25 b. The review, analysis, and denial of Korando's change orders /claim due  
26 to DPW's termination and delay of the project.
- 27 c. The 10/18/2016 Letter from Byong Ho Kim to Glenn Leon Guerrero  
28 regarding the "Claim Due to Termination and Delay of Project."

- 1
- 2 c. The 12/28/2016 Letter from Glenn Leon Guerrero to Byong Ho Kim  
3 regarding the "CLAIM DUE TO TERMINATION AND DELAYS OF  
4 PROJECT."
- 5 d. The 1/24/2017 Letter from Byong Ho Kim to Glenn Leon Guerrero  
6 regarding the "Claim Due to Termination and Delay of Project."
- 7 e. The 10/17/2017 Letter from Joyce C.H. Tang to Glenn Leon Guerrero  
8 regarding the "Korando Corporation/Bile & Pigua Bridge  
9 Reconstruction Project, Project No. GU-NYH-NBIS (007)."

10 II. ARGUMENT

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

13 2 GAR Div 4 §12104(c)(3) provides in relevant part as follows:

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

19 2 GAR Div 4 §12104(c)(3) (emphasis added). Further, Section 12105(e) requires that DPW submit as  
20 part of its Agency Report, *if not already submitted as part of the procurement record required by*  
21 *§12104(c)(3)*, the following:

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

24 2 GAR Div 4 §12105(e). Neither the Procurement Record submitted on January 24, 2018, the  
25 Agency Report submitted on February 6, 2018, of any of the five Supplements to the Procurement  
26 Record, contains a single communication, memorandum, or report within DPW or between DPW and  
27 another party relevant to the subject of Korando's protest. Specifically, prior to denying Korando's  
28 claims, a proper review would involve an analysis and recommendation provided to Mr. Leon  
Guerrero, the Director of DPW, regarding Korando's claim. DPW has not provided any documents  
relating to Korando's claim, as identified in Section I above. DPW must produce internal

1 communications, reports, analysis and documents that explaining the basis for its denial of Korando's  
2 claim, and any supporting documentation detailing the analysis performed of the claim are relevant to  
3 the allegations and claims raised in this Appeal.

4  
5 Guam law requires DPW to produce this information as part of the procurement record and in  
6 its Agency Report pursuant to 2 GAR Div 4 §§ 12104(c)(3) and 12105(e), respectively. Moreover,  
7 the OPA specifically ordered DPW to supplement the Procurement Record with this information by  
8 February 28, 2018, noting that DPW had agreed to produce the material in its February 16, 2018  
9 Response to Korando's Request to Supplement Procurement Record. Korando has spent significant  
10 time reviewing DPW's "data dump" of over 24,000 pages, only to discovery that DPW is still  
11 withholding the material Korando needs to prosecute this Appeal.

12  
13 On February 12, 2018, DPW filed its Attorney-Client Confidential Communication Log Sheet  
14 ("Privilege Log), claiming twelve (12) emails between DPW and the Office of the Attorney General  
15 as privileged communications it presumably would not be producing as part of the Procurement  
16 Record, some of which do not appear to have any relevance to this case. However, DPW has not  
17 produced *any* non-privileged emails from or to DPW, or internal emails between DPW staff, relating  
18 to Korando's claims in this Appeal.

19  
20 The formal hearing in this matter is scheduled for April 23, 2018. Korando's Comments to  
21 DPW's Agency report is due on March 21, 2018, and the deadline to file motions in this Appeal is on  
22 March 23, 2018. Korando is severely prejudiced by DPW's refusal to produce a timely and complete  
23 Procurement Record even though DPW agreed to do so and was ordered by the OPA to do so.  
24 Korando cannot adequately support its Comments to DPW's Agency Report, prepare Exhibit and  
25 Witness Lists, prepare possible dispositive motions, or prepare for the hearing in this matter unless  
26 and until it receives the procurement record in this matter.

27  
28 Accordingly, Korando respectfully requests that the Public Auditor and Hearing Officer order

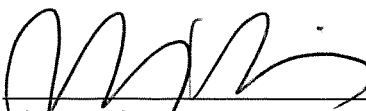
1 Korando to comply with the requirements of 2 GAR Div 4 §§ 12104(c)(3) and 12105(e) and the  
2 2/12/2018 D&O, and to supplement the Procurement Record in this matter with all material relevant  
3 to this Appeal, including but not limited to any documents, emails and correspondence related to the  
4 communications identified above. Further, Pursuant to 2 GAR Div. 4 §12109(h), the Hearing Officer  
5 may refuse to allow a party to support or oppose claims and defenses in a procurement appeal, or  
6 prohibit a party from introducing designated matters in evidence. Because DPW has failed to comply  
7 with Guam Procurement Law and the OPA's order, Korando requests that DPW be barred from  
8 introducing any evidence in support of its defenses in this case.  
9

10 **B. Enlargement of Time to File Comments to Agency Report and Other Motions**  
11

12 Because DPW has failed to comply with Guam Procurement Law requiring it to produce a  
13 complete procurement record and Agency Report, Korando cannot fully respond to DPW's Agency  
14 Report, or assess whether further motions are necessary. For this reason, Korando requests that it be  
15 granted additional time to respond to the Agency Report, presently due on March 21, 2018, and to  
16 file additional motions as necessary. Until such time as DPW produces a complete procurement  
17 record, Korando cannot anticipate the volume of the pending material, and cannot determine what  
18 length of time would be appropriate for Korando to submit its Comments to Agency Report or further  
19 motions. For this reason, Korandon requests a status hearing to determine whether DPW has  
20 complied with its obligations to produce a full procurement record, the volume of such record, the  
21 length of time necessary for Korando to review such record, and the appropriate length of time for  
22 Korando to file its Comments to Agency Report and further motions.

23 Dated this 19<sup>th</sup> day of March, 2018.

24 **CIVILLE & TANG, PLLC**

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28 *Attorneys for Appellant Korando Corporation*