



Jerrick Hernandez <jhernandez@guamopa.com>

In the Appeal of ST Corporation, Inc.; OPA-PA-20-008

Claire Pollard <cpollard@rwtguam.com>

Tue, Jan 5, 2021 at 4:24 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Edwin J. Torres" <etorres@rwtguam.com>

Dear Mr. Hernandez:

Please see attached ***Motion for Order Compelling Agency to Supplement Record*** to be filed in the above-referenced matter. Please feel free to contact our office if you have any questions. Thank you.

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Best,
Claire Pollard

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**Appellant's Motion for Order Compelling Agency to Supplement Record.pdf**

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

PART I.

In the Appeal of

ST Corporation, Inc.,

Appellant.

DOCKET NO. OPA-PA-20-008

**MOTION FOR ORDER
COMPELLING AGENCY
TO SUPPLEMENT RECORD**

MOTION

ST Corporation, Inc. ("ST" or "Appellant"), by and through its undersigned counsel, requests the Hearing Officer for the Office of Public Accountability ("OPA") to issue an Order compelling the General Services Agency, Department of Administration ("GSA") to supplement the Procurement Record previously filed in this case, because it appears that GSA has not provided all documents to the OPA as part of its Procurement Record.

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MEMORANDUM IN SUPPORT OF MOTION

The Public Auditor has the "power, among others, to (d) Rule on motions, and other procedural items on matters pending before such officer." 2 G.A.R. § 12109. As the procuring agency in GPA-IFB-007-18 (the "IFP"), GSA has a statutory obligation to maintain an accurate and complete Procurement Record. *See*, 5 G.C.A. § 5249. Within five days after the filing of a procurement appeal, the agency must file a complete copy of the Procurement Record. 2 G.A.R. Div. § 12104(c)(3). The Agency must also file an Agency Report. *Id.* at § 12105. In addition to the Procurement Record, GSA is required to submit in its Agency Report "[a]ny other documents which are relevant to the protest ... " *Id.* at §12105(e). While GSA submitted an Agency Report and Procurement Record, these records appear to be incomplete.

The record contains no log of communications

GSA has apparently failed to provide material and relevant documents as part of its Procurement Record and Agency Report submitted in this proceeding. 5 G.C.A. § 5249 governs the contents of the Procurement Record. It appears that nowhere in the Procurement Record has GSA included "a log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which is in any way related to the procurement," as required by 5 G.C.A. § 5429(b). Communications appear to be provided, but not the log of those communications.

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The record contains no written determination about restrictive specifications

Appellant believes GSA may have excluded other relevant documents from the Procurement Record in addition to the missing log of all communications. The crux of ST's protest is built upon the Guam procurement code mandate that all specifications "shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Territory's needs and shall not be unduly restrictive." 5 G.C.A. § 5265. The law requires that the specifications "shall not include requirements, such as but not limited to restrictive dimensions, weights or materials, which unnecessarily restrict competition, and shall include only the essential physical characteristics and functions required to meet the Territory's minimum needs." *Id.* at 5268(a). Guam law further requires that the territory should endeavor to procure "Standard commercial products whenever practicable" and avoid unique requirements. 2 G.A.R. § 4102(a)(3)). Such restrictive specifications cannot be used unless a written determination has been made that the restrictive specification must be used. *See*, 2 G.A.R. § 4106(a); 5 G.C.A. § 5268(b). No such determination appears to exist in the procurement record provided by the GSA.

The record should be supplemented or confirmed to be lacking the items sought.


2 G.A.R. § 12105(g) requires that the Agency Report submitted with the procurement record be "fully responsive to the allegations of the Appeal." GSA should be compelled to make sure that the record is, indeed, fully responsive to the issues

in this Appeal. The failure to have a proper procurement record is a deficiency that must be addressed by the Public Auditor. *See TLK v. Marketing Co., Ltd. V Guam Visitors Bureau et. al.*, Superior Court of Guam Civil Case No. CV0914-16, Decision and Order, Nov. 13, 2018. The OPA can and should compel GSA to supplement its Procurement Record by producing: (1) a log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which is in any way related to the procurement generally; and (2) any and all documents, communications, and records showing the written determination that the restrictive specifications contained in this procurement must be used.

Alternatively, if GSA does not have or did not maintain a record in respect to either of the two categories of missing information, then the OPA should require the Procurement Officer to submit a statement that the missing documents, record, or file was not maintained, kept or, if appropriate, destroyed. *See G.C.A. § 5250.* ("No procurement award shall be made unless the responsible procurement officer certifies in writing under penalty of perjury that he has maintained the record required by § 5249 of this Chapter and that it is complete and available for public inspection.")

Respectfully submitted on January 5, 2021.

RAZZANO WALSH & TORRES, P.C.

By: 

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