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RECEIVED
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 PROCUREMENT APPEALS

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FILE NO OPA-PA: 15-009

**THE OFFICE OF PUBLIC ACCOUNTABILITY
 HAGÁTÑA, GUAM**

In the Appeal of:

KORANDO CORPORATION,

Appellant,

and

GUAM DEPARTMENT OF
 PUBLIC WORKS

Purchasing Agency

) DOCKET NO OPA-PA-15-009

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)
) **PRELIMINARY AGENCY RESPONSE**
) **& AGENCY STATEMENT**
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The appeal filed by Korando Corporation (“Korando”) involves the Guam Department of Public Works (“DPW”) issuance of a July 10, 2015 Notice of Termination (the “Termination”). The Termination relates to DPW Project No. GU-NYH-NBIS (007). All actions that led to the issuance of the Termination occurred after issuance of the award of contract. There has been no allegation in the appeal that the award of the contract under a Request for Proposals was done in contrivance to the Guam Procurement Law or the Guam Procurement Regulations. Due to the limited nature of the appeal, DPW is including in the Agency Report only the documents relevant to the Termination. DPW respectfully reserves the right to supplement the Agency Report.

ORIGINAL

DPW, the purchasing agency in this matter, by and through its attorney the Guam's Attorney General Office, hereby submits the following exhibits required by 2 GAR § 12105:

- a. Copy of Protest.

Not applicable

- b. Copy of Bid or Offer submitted by the Appellant.

Not applicable

- c. Copy of Solicitation.

Not applicable

- d. Copy of the Abstract of Bids or Offers or Portions thereof Relevant to the Appeal.

Not applicable

- e. Any other documents relevant to the Appeal.

*A copy of the parties signed Contract is attached hereto as **Exhibit A**. A copy of the project documents post award of contract are attached hereto as **Exhibit B**. A copy of the project correspondence is attached hereto as **Exhibit C**.*

- f. Decision from which the Appeal is taken.

*A copy of DPW's July 10, 2015 termination letter is attached hereto as **Exhibit D**.*

- g. Statement Answering the Allegation of the Appeal.

As noted of DPW's July 10, 2015 termination letter, at the time of termination Korando had completed less than 1% of the projects permanent work. Korando was responsible for

*the project delays. Further, Korando, an experienced Guam contractor was reminded on a number of occasions that no time extension could be entertained without complying with contract requirements and submitting a formal claim. Absent a formal claim that references the project schedule and explaining how alleged delays impacted the projects critical path the department is not able to properly consider the validity of a time extension. Items A 1-5 of the Appeal relate to allegations against the department's construction management company, Stanley Consultants (Stanley), and are addressed in its September 4, 2015 letter to Director Leon Guerrero, a copy of which is attached hereto as **Exhibit E** and incorporated herein by this reference. The draft Contractor Performance, attached as Exhibit 13 to the Appeal is immaterial to DPW's decision to terminate. It was a draft only and not finalized at the direction of DPW's Director. Other grounds and legal analysis for objecting to Korando's Appeal will be set forth in the Agency's Report, which is due Wednesday, September 16, 2015.*

h. Determination of Award pursuant to 2 GAR § 92101(e).

As noted in the introduction to this Agency Report the award of contract Not in dispute in the Appeal.

i. Statement Regarding Court Proceeding.

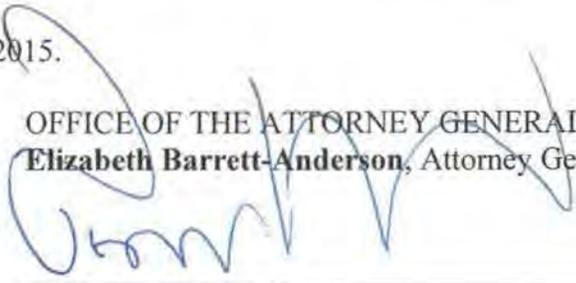
Pursuant to 5 GCA Chapter 5, unless the court request, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his knowledge, no case or action concerning the subject of the Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Dated this 16th day of September, 2015.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General

By:



THOMAS P. KEELER
Assistant Attorney General

EXHIBIT E



September 4, 2015

Glenn Leon Guerrero
Director
Department of Public Works
542 North Marine Corps Drive
Upper Tumon, Guam 96913

**RE: Bile/Pigua Bridge Replacement
GU-NH-NBIS(007)
RESPONSE TO CIVILLE & TANG, PLLC LETTER TO DPW DATED AUGUST 7,
2015**

Dear Mr. Leon Guerrero,

At the request of the Department of Public Works (DPW) we have prepared the following response to the above mentioned letter, with specific attention to Item 4 Alteration of Construction Documents and Records by Stanley Consultants.

The August 7, 2015 letter to DPW from Civile & Tang alleges that Korando was delayed in the prosecution of the work by the actions of Stanley Consultants including interference with Korando's means and methods. The letter makes specific reference to Korando's proposed construction phasing plan presented in Submittal 562.001-02 and it alleges in Item 4 of the letter that Stanley Consultants' updating of the Submittal Log to reflect the changed review status of Submittal 562.001-02 constituted a falsification of public record.

Response to Allegation of Delay

First and foremost, we note that Korando failed to prosecute the work diligently and in a timely manner and was delayed for reasons solely within their control. Korando was not delayed by any action of Stanley Consultants. This is supported by the following facts:

- Korando worked on the project more than six months following the January 5, 2015 Notice to Proceed (NTP). During this time Korando did not submit a single request for a time extension in accordance with Section FP-03 108.03 of the Contract.
- DPW's letter to Korando dated May 13, 2015 specifically directed Korando to Contract Section FP-03 108.03 Determination and Extension of Contract Time if it were Korando's intention to submit a request for a time extension. Korando did not submit a request for a time extension.
- Contract Section FP-03 108.03 Determination and Extension of Contract Time states the requirements for the Contractor to request a time extension. According to this section of the Contract "Only delays or modifications that affect critical activities or cause noncritical activities to become critical will be considered for time extensions." Additionally the Contract states:

"When requesting a time extension, [the Contractor shall] follow the applicable Contract clauses. Make the request in writing and include the following: (a) Contract clause(s) under which the request is being made. (b) Detailed narrative description of the reasons for the requested Contract time adjustment including the following: (1) Cause of the impact affecting time; (2) Start date of the impact; (3) Duration of the impact; (4) Activities affected." Korando never submitted a request for an extension of Contract time in conformance to Contract requirements. The August 7, 2015 letter from Civile & Tang does not make a request for a time extension in accordance with the conditions of the Contract but rather states "Korando was entitled to, at a minimum, a 4 month extension of time." The letter does not provide any support for this claim, does not reference Korando's project schedule, makes no mention of the critical activities that were delayed and makes no attempt to satisfy the Contract requirements for an extension of Contract time. The claim that "Korando was entitled to, at a minimum, a 4 month extension of time" is unsupported and without regard to the Contract requirements.

- The Contract requires that if "conditions at the site are found to be materially different from those indicated by the drawings and specifications . . . the attention of the Contracting Officer shall be called immediately to such conditions." (Instruction To Bidders Article 15.3). Korando did not notify the Contracting Officer of any conditions different from those indicated on the drawing and specifications.
- Korando alleged that the Contract phasing plan was not constructible due to a conflict between the existing temporary bridge and the proposed Phase 1 Bridge. DPW's letter to Korando dated May 5, 2015 responded to this issue and demonstrated there was no conflict. The response noted Korando had proposed an alternate construction phasing plan for their convenience and not because the construction phasing plan presented in the Contract drawings was not constructible.
- The August 7, 2015 letter from Civile & Tang states: "Korando realized as early as October, 2014, before the NTP was issued that the original Phasing Plan in the permitted plans was not constructible. To address the shortcomings of the original Phasing Plan, Korando submitted a Revised Phasing Plan on October 27, 2014 (Submittal 562.001-02) to Stanley for review." This statement is in direct contradiction to Korando's statement in their April 15, 2015 letter to DPW where Korando states: "The alternate phasing plan was chosen for the one time mobilization of pile driving equipment. The proposed temporary steel bridge would be designed to support the crane used for pile driving." If the Contract plans were not constructible, Korando should have notified the Contracting Officer. Korando did not notify the Contracting Officer that the Contract plans were not constructible. Submittal 562.001-02 Construction Phasing Plan does not mention any constructability issues.
- Item 5 in Civile & Tang's August 7, 2015 letter claims Stanley Consultants took 44 days to review Submittal 107.007-01 HACCP Plan. The implication is that Stanley Consultants review delayed the progress of the work. The submittal was received on February 18, 2015 and the review was completed on March 4, 2015 and returned to Korando on March 5, 2015 after a period of 15 days, not 44 days as claimed. Furthermore it should be noted Korando was free to commence work on the site once the conditions of their building permit were met. The submittal required no action on the part of Stanley Consultants. Korando only needed to demonstrate that the conditions of their building permit had been met.
- A review of the project progress meeting notes over the duration of the project with regard to recurring Agenda Item 1.3, Potential Delays/Critical Issues, discussed at each meeting shows the permitting of Korando's staging area and Korando's failure to follow up on submittals to be

repeated issues cited as potential delays or critical issues. However, no mention is made in the meeting notes of any delay caused by Stanley Consultants or any delay related to the March 1, 2015 change in review status of Submittal 562.001-02.

- There is no mention in the project record of any delay caused by Stanley Consultants or any delay related to the March 1, 2015 change in review status of Submittal 562.001-02. This issue is found only in the Civille & Tang letter to DPW dated August 7, 2015.

Allegations of Delays Related to the Approval of Korando's Proposed Construction Phasing Plan

Civille & Tang letter to DPW dated August 7, 2015 claims a "Delay relating to the approval of the Revised Phasing Plan affected the critical path for the Project." However, the Civille & Tang letter makes no reference to Korando's schedule, does not identify the critical activities that were allegedly delayed and does not provide any support for this alleged delay. At no time was Korando delayed with respect to the review of the revised phasing plan. The project was delayed due to Korando's failure to prosecute the work diligently and in a timely manner. Korando was delayed for reasons solely within their control which had nothing to do with the review of the revised construction phasing plan.

Submittal 562.001-02 Construction Phasing Plan was submitted by Korando on October 27, 2014. The submittal proposed a construction phasing plan that deviated from the plan provided in the Contract drawings. The August 7, 2015 letter from Civille & Tang states: "Korando realized as early as October, 2014, before the NTP was issued that the original Phasing Plan in the permitted plans was not constructible. To address the shortcomings of the original Phasing Plan, Korando submitted a Revised Phasing Plan on October 27, 2014 (Submittal 562.001-02) to Stanley for review." This statement is in direct contradiction to Korando's statement in their April 15, 2015 letter to DPW where Korando states: "The alternate phasing plan was chosen for the one time mobilization of pile driving equipment. The proposed temporary steel bridge would be designed to support the crane used for pile driving." Neither the submittal nor any other Korando correspondence indicates that Submittal 562.001-02 was submitted due to the Contract plans not being constructible. If such a situation were discovered by the Contractor, the Contractor is required to immediately notify the Contracting Officer (Instruction to Bidders Article 15.3). Korando did not submit any such notification.

Korando's Submittal 562.001-02 was reviewed and returned to Korando on November 4, 2014. The submittal was marked Exceptions as Noted (EAN). It was not marked "Approved" as stated in the August 7, 2015 letter from Civille & Tang. There is no "Approved" review status on the submittal review stamp. The review comments requested Korando to make several revisions or corrections to the submittal. Korando did not make the corrections and did not resubmit the submittal in response to the review comments.

Korando's Submittal 562.001-02 Construction Phasing Plan deviated from and replaced the plan provided in the Contract drawings for the construction phasing. Consequently, portions of Contract drawings that were based on the construction phasing shown in the Contract were impacted. Modifications to these drawings were necessary to complete the work per Korando's alternate plan. By the end of February 2015 Korando had not submitted the revisions to the Contract plans that were necessary due to Korando's modification of the Contract construction phasing plan. Korando had not submitted other shop drawings related to and necessary for the implementation of Korando's construction phasing plan. Also, Korando had not responded to the review comments from the November 4, 2014 review of Submittal 562.001-02. Submittal 562.001-02 was reviewed again in February 2015 by Stanley Consultants as Korando was

preparing to mobilize to the site. Additional concerns were discovered by Stanley Consultants generating additional review comments. Stanley Consultants completed a second review on March 1, 2015 and changed the review status of the submittal from Exceptions as Noted to Revise/Resubmit. The review comments were transmitted to Korando on March 2, 2015. This review did not reject the concept presented by Korando, did not add any work, did not dictate the Contractor's means and methods and did not delay the work. The review comments identified additional details and information that Korando needed to provide in order to move forward with the implementation of their construction phasing plan. The reason for the second review of Submittal 562.001-02 and the change in review status was given to Korando along with the detailed review comments. This information was acknowledged as received by Korando on March 2, 2015. The Submittal Log was updated accordingly and distributed at the next progress meeting on March 10, 2015.

Allegations of Interference with Korando's Means and Methods

The Civile & Tang August 7, 2015 states: "Throughout the project, Stanley objected to Korando's construction means and method with respect to the Revised Phasing Plan." This statement is false and not supported by the project record. At no time was Korando prohibited from proceeding with the work in accordance with their proposed construction phasing plan.

The Civile & Tang August 7, 2015 states: "Korando's means and methods and price were predicated on the requirements of the RFP, and to insist that Korando alter its means and method of construction five months after approving the Revised Phasing Plan (11/27/2014), caused additional delay to the Project." This statement is also false and not supported by the project record. At no time did anyone insist that Korando alter its means and methods.

The March 1, 2015 Submittal 562.001-02 review comments by Stanley Consultants regarding Korando's revised construction phasing plan noted that Korando needed to submit additional information before they could move forward with their proposed construction phasing plan and commence bridge work. The necessary additional information included shop drawings for the electrical plan, temporary sheet piles and the temporary steel bridge. The submittal of this information is standard practice and is required in the Contract per FP-03 Section 104.03. The project record shows that Korando did not submit the shop drawings to be approved for this work. Consequently, Korando could not implement their proposed construction phasing plan. The review comments did not add any work, hinder the work, dictate Korando's means and methods or delay the work in any way. Korando failed to advance the work because they failed to submit shop drawings necessary to implement their proposed construction phasing plan.

Civille & Tang's August 7, 2015 letter states "Korando determined prior to the issuance of the NTP that the existing bridge would not support the load. As this was an issue of construction methodology, which as you know is determined solely by the Contractor, Korando properly and timely notified DPW/Stanley by submitting the Revised Phasing Plan." This statement directly contradicts the project record as noted below:

- Korando's April 15, 2015 letter to DPW states: "The alternate phasing plan was chosen for the one time mobilization of pile driving equipment. The proposed temporary steel bridge would be designed to support the crane used for pile driving." No mention is made of the existing bridge capacity.

- Submittal 562.001-02 Construction Phasing Plan makes no mention of the capacity of the existing bridge.
- The bridge capacity is first raised by Korando in RFI#11 dated April 30, 2015. In this RFI Korando requested the maximum allowable load capacity of the existing bridges. This was followed by Submittal 562.006-01 Existing Temporary Bile and Pigua Bridge Assessment on May 28, 2015 which was later replaced by Submittal 562.006-02 Existing Temporary Bile and Pigua Bridge Assessment on June 4, 2015. Submittal 562.006-02 was reviewed, found to have several questionable calculations or assumptions and other points which needed clarification. The submittal was returned on June 10, 2015 with the review status "Revise and Resubmit." The review included 13 comments that needed to be addressed in the revision and resubmittal. Korando did not revise and resubmit their assessment of the existing bridges. The assessment of the existing bridges submitted in May 2015 was not conclusive and it has yet to be completed and resubmitted. Therefore it is not possible that Korando "determined prior to the issuance of the NTP that the existing bridge would not support the load."

Civille & Tang claimed that "Stanley Consultants objected to Korando's construction means and methods with respect to the Revised Phasing Plan" and that Stanley Consultants "directed Korando to follow the construction method set forth in original Phasing Plan." This is not supported by the project record and is not true.

Civille & Tang also claimed that "Stanley went as far as to tell Korando in an April 24, 2015 email that not only was the bridge adequate for use, but for reasons not provided in that email, Stanley would not allow Korando to move cranes and heavy equipment on the existing bridge, and required Korando to dismantle and reassemble the crane and carry it back and forth to move the crane." It is unclear how this supports Civille & Tang's claim that Stanley Consultants objected to Korando's means and methods with respect to their revised construction phasing plan. Furthermore, the "reasons not provided in that email" regard the fact that Korando must comply with legal load restrictions as required by the Contract in FP-03 Section 104.05 Load Restrictions. This was further explained to Korando in Items 10 and 11 in the review comments to Submittal 562.006-02 provide to Korando on June 10, 2015.

Stanley Consultants did not interfere with Korando's means and methods of construction. Allegations to the contrary in Civille & Tang's letter dated August 7, 2015 are not true and are without support.

Allegations of Falsification of Public Records

The Submittal Log provides a listing of the submittals and their review status. The Submittal Log is a tool used by Stanley Consultants to monitor the status of project submittals and is subject to regular updates as the status of submittals change. The Submittal Log was routinely shared with the Contractor; however Korando was free to maintain their own submittal log as is often done by contractors. The routine updating of the Submittal Log does not constitute a false entry or a false alteration of a public record but is the standard of practice. The Civille & Tang claim to the contrary is without merit.

When Submittal 562.001-02 was reviewed a second time on March 1, 2015 and the review status was changed from Exceptions as Noted to Revise/Resubmit, it was necessary to update the Submittal Log to reflect this change. The Submittal Log was not "inexplicably altered" as claimed in the August 7, 2015 letter from Civille & Tang. There was no deletion of the "approved" Submittal 562.001-02. The Submittal Log was updated as is normal practice to reflect the revised review status. Korando received the revised

submittal review on March 2, 2015; Korando was aware of the revised submittal review status. No concern or response was received from Korando on this issue.

Civille & Tang states that "Inclusion of the 'approved' Submittal 562.001-02 in the Submittal Logs after March 1, 2015, would be in direct conflict with the DPW March 19, 2015 'Schedule Delay' letter." is not true. Neither the first submittal 562.001-02 returned with the status Exceptions as Noted on November 4, 2014 nor the second review of Submittal 562.001-02 sent to Korando on March 2, 2015 with the status of Revise/Resubmit have any connection to the March 19, 2015 DPW letter to Korando regarding schedule delay. The facts stated in the DPW letter stand alone and are not related to the review status of Submittal 562.001-02.

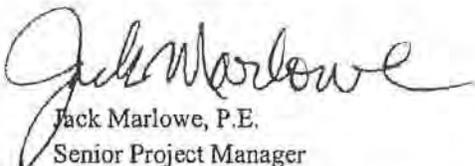
Conclusion

In conclusion, we provide the following comments:

1. Korando was responsible for project delays, not Stanley Consultants. Korando failed to prosecute the work diligently and in a timely manner and was delayed for reasons solely within their control.
2. Civille & Tang letter to DPW claims that the project was delayed due to Submittal 562.001-02 review. The project was delayed due to Korando not performing the work diligently and in a timely manner. The delay was not the result of the March 1, 2015 review comments for Submittal 562.001-02. The review comments did not add any work, hinder the work, dictate Korando's means and methods or delay the work. The review comments identified additional details and information that Korando needed to address in order to move forward with the implementation of their construction phasing plan including additional submittals required by Contract per FP-03 Section 104.03. These tasks were necessary and inherent to the work. The project record shows that Korando failed to address the comments, failed to move forward with the implementation of their construction phasing plan and failed to progress the work.
3. "The alternate phasing plan was chosen for the one time mobilization of pile driving equipment" as stated by Korando in their April 15, 2015 letter to DPW. Korando did not submit the alternate construction phasing plan due to concerns over the capacity of the existing bridges as claimed in the Civille & Tang August 7, 2015 letter. Korando did not express concerns over the capacity of the existing temporary bridges until six months after making Submittal 562.001-02 on October 27, 2014. Korando has not demonstrated that the existing bridges are inadequate for construction purposes. Korando did not respond to the comments submitted to them questioning their assessment of the existing bridge capacity (Re: Submittal 562.006-02 Rev/R June 10, 2015).
4. Submittal 562.001-02 was not "approved" on November 4, 2014. The submittal was returned marked Exceptions as Noted with seven comments describing necessary corrections, additions or clarifications. The project record shows these comments were not addressed by Korando prior to March 1, 2015 when a second review was performed.
5. There was no deletion of the "approved" Submittal 562.001-02. The Submittal Log was updated as is normal practice to reflect the revised review status.
6. The Submittal Log was not "inexplicably altered" as claimed in the August 7, 2015 letter from Civille & Tang. On March 2, 2015 Korando acknowledged receipt of Submittal 562.001-02 with the status changed to Revise/Resubmit. The information transmitted to and acknowledged by

- Korando included a detailed explanation of why the review status was changed. Since the change in review status was explained to Korando, the change was not inexplicable.
7. There was no "falsification of public records." The Submittal Log is routinely updated to reflect the status of the project submittals. The submittal status was revised and the submittal was sent to Korando with review comments. It was normal and necessary to update the Submittal Log with the revised submittal review status.
 8. Civile & Tang's statement that "Inclusion of the 'approved' Submittal 562.001-02 in the Submittal Logs after March 1, 2015, would be in direct conflict with the DPW March 19, 2015 'Schedule Delay' letter" is not true. Neither the first submittal 562.001-02 returned with the status Exceptions as Noted on November 4, 2014 nor the second review of Submittal 562.001-02 sent to Korando on March 2, 2015 with the status Revise/Resubmit have any connection to the March 19, 2015 DPW letter to Korando regarding schedule delay. The facts stated in the DPW letter stand alone and are not related to the review status of Submittal 562.001-02.
 9. There is no mention in the project record of any delay caused by Stanley Consultants or any delay related to the March 1, 2015 change in review status of Submittal 562.001-02. This issue is found only in the Civile & Tang letter to DPW dated August 7, 2015.
 10. Korando never submitted a request for an extension of Contract time as required by Contract Section FP-03 108.03. The August 7, 2015 letter from Civile & Tang does not make a request for a time extension in accordance with the conditions of the Contract. The claim that "Korando was entitled to, at a minimum, a 4 month extension of time" is unsupported and without regard to the Contract requirements.

Sincerely,
Stanley Consultants, Inc.



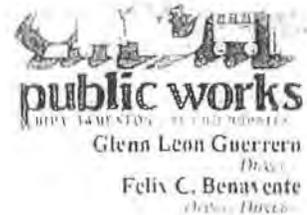
Jack Marlowe, P.E.
Senior Project Manager

Attachments: Letter: Korando to DPW, dated 3/19/15 - Schedule Delay
Letter: Korando to DPW, dated 4/15/15 - Schedule Delay Response to DPW Letter
Letter: DPW to Korando, dated 5/5/15 - Schedule Delay and Construction Phasing Plan
Letter: DPW to Korando, dated 5/13/15 - Schedule Delay Request for Extension of Contract Time, Korando Letter, dated April 27, 2015
Submittal: 562.001-02 Construction Phasing Plan EAN 11/4/14 (Transmittal and Comments Only)
Submittal: 562.001-02 Construction Phasing Plan REV/R 3/1/15 (Transmittal and Comments Only)
Submittal: 562.006-02 Existing Temporary Bile and Pigua Bridge Assessment REV R 6/10/15 (Transmittal and Comments Only)

Cc: Crispin Bensen, DPW
Tom Keeler, DPW
Joe Pecht, PTG
Derrick Lehman, PTG
Houston Anderson, PTG

The Honorable
Eddie Baza Calvo
Governor

The Honorable
Ray Tenorio
Lieutenant Governor



MAR 19 2015

Mr. Byong Ho Kim
President
Korando Corporation
380H Harmon Industrial Park
Tamuning, Guam 96913

Re: **Bile / Pigua Bridges Replacement**
Project No. GU-NH-NBIS(007)
Schedule Delay

ACKNOWLEDGMENT RECEIPT:	
NAME:	Patricia Jaleo
DEPT./COMPANY:	Korando Corp
DATE:	3/20/15
TIME:	4:45
SIGNATURE:	[Signature]

Dear Mr. Kim,

The Department of Public Works is concerned over the lack of progress on the above referenced project. More than 11 weeks have passed since the Notice to Proceed was issued on January 5, 2015 without any work performed on site other than a survey.

Korando Corporation submitted the February 2015 update to the approved baseline schedule indicating a construction completion date of May 9, 2016. This is 41 days beyond the Contract Completion Date of March 29, 2016. Activity A1170 for the design, fabrication and delivery of the prestressed precast concrete piles is the controlling activity at present. The test piles have not been cast or driven and the production lengths have not been determined. Based on the lack of progress on this activity alone, we estimate that Korando may be nearly two months behind the approved baseline schedule at the present time.

Korando has also submitted a revised baseline schedule showing a completion date of March 29, 2016. However, a preliminary review reveals several issues that make this schedule appear overly optimistic. These include:

- Revised Temporary Utility Plans – The contractor has proposed an alternate phasing plan with new bridge construction starting on the ocean side rather than the mountain side. This requires the temporary utility plans to be revised, including power, water and communications. Korando has not yet submitted the revised plan for review.
- Temporary Traffic Control Plans – The alternate phasing plan proposed by Korando also revises the traffic control plan shown in the contract. Korando has been instructed to submit a detailed traffic control plan for the revised phasing. An approved plan is required before the temporary maintenance of traffic can be established.
- Utility Relocation Plans – The schedule indicates that there are more than 200 days of float for preparing the utility relocation plans and procuring material (Activities A1160, A1190, A1200 and A1210). This cannot be correct. Korando's schedule indicates starting the installation of power poles on March 23, 2015 and Korando has not submitted the

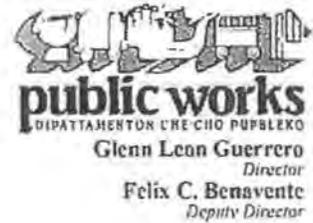
542 North Marine Corps Drive, Tamuning, Guahan 96913, Tel (671) 646-3131, Fax (671) 649-6178

TR: [Signature]



The Honorable
Eddie Baza Calvo
Governor

The Honorable
Ray Tenorio
Lieutenant Governor



Glenn Leon Guerrero
Director
Felix C. Benavente
Deputy Director

June 26, 2015

Mr. Byong Ho Kim
President
Korando Corporation
P.O. Box 20538
GMF, GU 96921

**Ref: Bile/Pigua Bridge Replacement
Project No. GU-NH-NBIS(007)
NOTICE OF DEFAULT**

Mr. Kim:

This serves to place you on notice that **Korando Corporation** ("Korando") is in default of the above referenced contract. Specifically, Korando is in breach of the following contract provisions:

1. **Section 108.1 – Commencement, Prosecution and Completion of Work** obligates contractor to "(a) commence work under this contract immediately after the issuance of the **Notice to Proceed**, prosecute the work diligently, ...
2. **Section 108.5 (e)** If the Contractor shall refuse or fail to prosecute the work or any part thereof with such diligence as will insure its completion within the period herein specified ...
3. **Section 108.5 (f)** If the Contractor shall refuse or fail to regard the laws, ordinances or instructions of the Contracting Officer or otherwise be guilty of substantial violations of any provision of the contract, then, in any such event, the Owner, upon receipt of certification from the Contracting Officer justifying that sufficient cause exists, may within 10 calendar days terminate the employment of that Contractor, ...
4. **Section 155.06 – Schedule Updates**, which provides that "Failure of the contractor to maintain the construction schedules and charts will be considered justification for withholding payments.
5. **Formal Contract Article 1 (a) Contract Time.**

6. **Instructions To Bidders Article 11. Time of Completion.**
7. **Notice To Bidders Article 5. Contract Time.**
8. **FP-03 Subsection 107.01 Laws to be Observed.**
9. **FP-03 Subsection 155.01 / FAR Sections 52.236-15 Schedules for Construction Contracts.**
10. **FAR and 52.249-10 Default (Fixed-Price Construction).**
11. **Article I.3 of the Required Contract Provisions (RCP) Federal-Aid Construction Contract.**
12. **Instructions to Bidders Article 25 Termination of Work on Failure to Pay Agreed Wages.**

A number of the above listed breach of contract provisions relate to H2B Temporary Alien Worker limitations; Apprentice Program documentation and reporting; Certified Payroll worker classifications; Certified Payroll reporting; Minimum wage requirements for laborer classification; and Change orders.

The Department of Public Works ("DPW") issued the Notice to Proceed ("NTP") on January 5, 2015. Despite numerous meetings, letters and telephone calls urging Korando to take the action necessary to complete the project on time we estimate that thirty eight percent (38%) of the contract time has expired with only five percent (5%) of the work performed although the work primarily relates to mobilization and establishing a field office. Permanent work on the project is less than one percent (1%) leading us to determine that Korando will exceed the agreed to completion date by one hundred and thirty two (132) days.

In my capacity as Contracting Officer I hereby certify that for the reasons set forth herein sufficient cause exists for terminating the contract. Korando has *ten (10) calendar days from receipt of this Notice of Default* to (a) commence meaningful work on the Project; (b) supply enough properly skilled workmen and provide the materials to complete the work within the contract term; (c) to submit *acceptable* updated Project schedule; and (d) the other listed defects. The updated Project schedule needs to be realistic and needs to acknowledge delays in performance to date and that Korando is not able to complete the Project in the contracted for time. In this respect, the department has only recently received your June 22, 2015 letter requesting major changes to Project's electrical plan. We do not intend on responding to this letter until the updated Project schedule is received, which we request either reference the electrical plan changes or incorporate them therein. This Notice allows you ten (10) calendar days to cure the failure to diligently perform meaningful work and correct all current breaches of the parties' contract. Unless the failure to perform is cured within the ten (10) calendar days the Contracting Officer may issue a notice of termination for default.

Nothing herein is intended to nor shall be interpreted as waiving or amending Korando's rights and obligations under the contract, all of which are specifically reserved by the Government of Guam.

If you have any questions or need additional information, please contact, Mr. Isidro Duarosan, Supervisor, Federal-Aid Highway Construction Section at 649-3104, Mr. Crispin Bensen, Project Engineer, DPW at 649-3115, Mr. Houston Anderson, Construction Manager, Parsons Transportation Group, Inc. at 648-1066 or Mr. Jack Marlowe, Chief Resident Project Representative, Stanley Consultants at 646-3466.

Sincerely,

GLENN LEON GUERRERO

Cc: Isidro Duarosan, DPW
Crispin Bensen, DPW
Richelle Takara, FHWA
Jack Marlowe, CM
Joseph Pecht, PTG
Derrick Lehman, PTG
Houston Anderson, PTG
Westchester Fire Insurance Company c/o Takagi & Associates, Inc.

IDuarosan /JBla2