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RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

DATE: 11-13-15
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 FILE NO OPA-PA: 15-009

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

In the Appeal of:)	DOCKET NO. OPA-PA 15-009
)	
KORANDO CORP.)	
Appellant,)	DEPARTMENT OF PUBLIC WORKS'
)	REPLY TO KORANDO
and)	CORPORATION'S REQUEST
)	FOR DISCOVERY
Department of Public Works)	
)	
Purchasing Agency)	

The **Department of Public Works** ("DPW"), Government of Guam, acknowledges that it has inadvertently failed to produce all records related to Korando's OPA Appeal. This failure however was neither intentional nor was it done in bad faith. DPW, its consultants and counsel acted in good faith in filing the **Bile/Pigua Bridge Reconstruction Project** (the "Project") procurement and other Project documents.

First, neither DPW's Director nor its counsel are tasked with compiling and submitting the OPA Appeal records or the materials needed to respond to Korando's numerous Sunshine Act

ORIGINAL

Requests. These tasks are the responsibility of Parsons Transportation Group, whose sole client is DPW. See **Exhibit A**, *Mike Lanning Declaration to DPW's Motion to Disqualify Civile & Tang*. Thus, Parsons Transportation Group is responsible for providing the procurement record and responding to Korando's Sunshine Act Requests.

In Korando's Motion for Discovery Ms. Tang states that she had never seen the Exhibit J to DPW's Rebuttal to Korando's Response to Agency Report. In communicating with Ms. Tang, I informed her that the Exhibit J emails were included in the materials produced by Parsons Transportation Group. This representation was based on meetings with **Parsons Brinckerhoff International Inc.** ("PBI"), which verbally advised that the Exhibit J emails were included in the materials produced in Korando's OPA Appeal. See **Exhibit A Declaration of Thomas P. Keeler** ¶ 5 ("**Keeler Dec.**") Upon receipt of Korando's Request for Discovery I revisited with Parsons Transportation Group and PBI whether materials and correspondence from PBI and **Stanley Consultants, Inc.** ("**Stanley**") had been produced in Korando's OPA Appeal and was informed for the first time that they hadn't. *Id.* ¶ 6. Mr. Lanning, Parsons Transportation Group, explained that he thought PBI materials were outside the scope of the Appeal. I was advised of this error on Monday November 9, 2015 and immediately notified Ms. Tang. See, **Exhibit B**, *Email from Tom Keeler to Joyce Tang*.

Parsons Transportation Group continues to devout two (2) staff members assigned to work on the 3rd and 4th Sunshine Act Requests and expects to be able to fully respond to both requests by Friday, November 20, 2015. *Id.* ¶ 7. PBI will assign separate staff to produce the PBI controlled emails and documents and also expects to produce them in fully by Friday, November 20, 2015. *Id.* ¶ 8.

Ms. Tang's allegation that "DPW has refused to fully respond to Sunshine Act Requests" is a false statement. First, as noted above when Ms. Tang alleges that DPW is refusing to respond she is in fact claiming that Parsons Transportation Group, who Patrick Civile represents on a Route 4 FHWA funded project, is *refusing* to respond. This allegation of bad faith is the basis for DPW's Motion to Disqualify Civile & Tang in Korando's OPA Appeal. Secondly, DPW and Parsons Transportation Group aren't refusing to respond they simply don't have the staff and resources to immediately respond to the 4th FOIA Request that seeks, in essence, all correspondence and documents for all FHWA funded projects since 2010. DPW and Parsons Transportation Group have fully responded to two (2) of four (4) Sunshine Act Requests, has already substantially responded to the third (3rd) Request and reasonably expects to provide the balance of the third (3rd) requested items by mid next week.

DPW and Parsons Transportation Group's failure to fully respond to date to Ms. Tang's fourth and final (4th) October 5, 2015 Sunshine Act Request lies not with any lack of a good faith effort as alleged but instead with the unreasonableness of the 4th Request and the overwhelming burden placed on the department and its consultant. My October 7, 2015 email requested Ms. Tang resubmit her 3rd and 4th Requests because:

"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."

See, **Exhibit B**, *Tom Keeler email to Joyce Tang*.

Ms. Tang did not respond to this or other requests. It wasn't until November 3, 2015, or nearly a month after Parsons Transportation Group had assigned staff members to work on the request eight

(8) hours a day, five (5) days a week, that Ms. Tang finally agreed narrow the scope of the 4th Request. See, **Exhibit C**, *Joyce Tang email to Tom Keeler*.

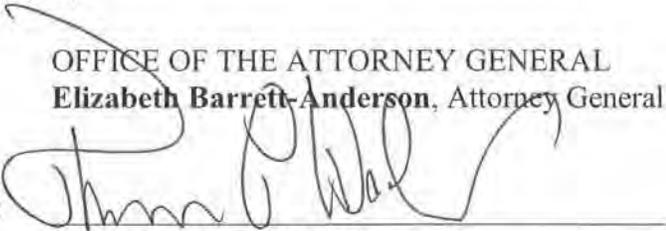
As further evidence of DPW and Parsons Transportation Group's good faith efforts, Mr. Michael Lanning states he has been "forced to devote approximately seventeen per cent (17%) of its work force to produce materials that admittedly of no use to Korando, debilitate PTG's work force and cost an exorbitant sum to DPW." See **Declaration Michael Lanning**, *attached to DPW's Motion to Disqualify Civile & Tang*.

CONCLUSION

In closing, DPW and Parsons Transportation Group made an inadvertent error in failing to provide the PBI and Stanley emails. Upon discovery of the mistake it immediately notified Ms. Tang and took measures to produce the missing information. It is the department's position that Korando's allegation that DPW and Parsons Transportation Group acted in bad faith taints the proceedings under GRPC Rule 1.10. See DPW's Motion to Disqualify Civile & Tang. The Department of Public Works, Government of Guam, is acting in good faith and will supplement the OPA record and respond to Ms. Tang's 4th FOIA Request in a timely manner.

Dated this 13th day of November, 2015.

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

By: 

THOMAS P. KEELER
Assistant Attorney General

EXHIBIT A

Declaration of Assistant Attorney General Thomas Keeler

**DECLARATION OF ASSISTANT ATTORNEY GENERAL
THOMAS P. KEELER IN RESPONSE TO KORANDO'S
REQUEST FOR DISCOVERY IN OPA-PA-15-009**

THOMAS P. KEELER makes this declaration under penalty of perjury under the laws of Guam and states:

1. I am employed as an Assistant Attorney General by the Guam Attorney General's Office and am assigned to the Highway Division of the Department of Public Works ("DPW") to assist on Federal Highway Administration ("FHWA") funded route and highway construction projects.

2. Upon receipt of Ms. Joyce Tang's four (4) Sunshine Act Requests related to DPW's July 10, 2015 termination of Korando Corporation ("Korando") on the Bile/Pigua Bridge Reconstruction Project (the "Project") I forwarded copies to my secretary at the Attorney General's office to open up a file for each request. I also forwarded on copies to Mr. Mike Lanning of Parsons Transportation Group whose company oversees the general oversight and monitoring of all FHHA funded projects. In this respect Parsons Transportation Group is responsible for the maintenance of FHWA funded project records and correspondence.

3. As part of my work on Korando's OPA Appeal I interviewed staff members of Parsons Brinckerhoff International Inc. ("PBI"), which is an engineering professional services consulting firm, that also works with DPW on FHWA funded projects. During one of these meetings PBI's Jeff Wilson or Lynden Kobayashi mentioned an exchange of emails between its office and Stanley Consultants, Inc. ("Stanley") concerning what appeared to be Korando's limited dealings with the Guam Power Authority ("GPA"). I requested and was subsequently provided a series of emails between PBI and Stanley.

4. Owing to the voluminous amount of documents filed in Korando's OPA Appeal and in response to Ms. Tang's four (4) Sunshine Act Requests I have not reviewed the materials, as is my normal practice, prior to filing with the OPA or forwarding on to DPW's Director who is responsible for preparing a formal response to the requestor. Instead, on Korando related matters I have relied on the representations of Parsons Transportation Group and PBI.

5. Prior to including what is now known as Exhibit J to DPW's Rebuttal to Korando's Response to Agency Report (i.e., Marlowe/Kobayashi emails) I inquired whether the emails had been produced in the documentation provided in Korando's OPA Appeal. I was informed that they had been produced.

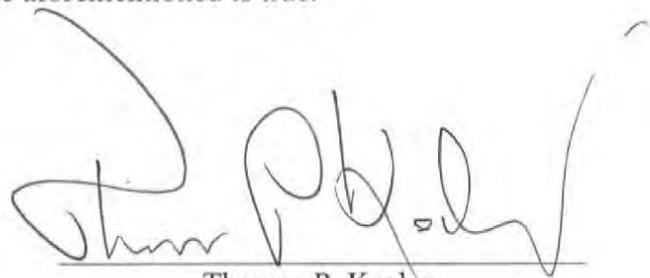
6. Upon receipt of Korando's Request for Discovery I met with and/or talked separately to Parsons Transportation Group's Mike Lanning and PBI's Jeff Wilson to go over once again what materials had been produced in response to the appeal and Ms. Tang's four (4) Sunshine Act Requests. On Monday November 9, 2015 Mr. Lanning stated that he didn't understand that the PBI/Stanley communications were part of the procurement record and that they needed to be produced in Korando's OPA Appeal. He also stated he didn't consider providing them in response to Ms. Tang's August 10, 2015 Sunshine Act Request as it was specifically limited to a) DPW/his office and Stanley communications and b) the request was further limited to bridge submittals. Mr. Lanning stated he would confer with PBI's Jeff Wilson and that they would get back to me shortly.

7. Parsons Transportation Group's Mike Lanning informed me today that he estimates that Ms. Tang's 3rd Request will be responded to in full by the end of next week. He also hopes expects to be able to fully respond to the revised 4th Request by Friday, November 20, 2015.

8. PBI's Jeff Wilson stated that he expects to provide the PBI correspondence and documents related to the Project by Friday, November 20, 2015.

I declare under penalty of perjury that the aforementioned is true.

Dated: November 13, 2015.

A handwritten signature in black ink, appearing to read 'Thomas P. Keeler', written over a horizontal line.

Thomas P. Keeler
Assistant Attorney General

EXHIBIT B

Email to Joyce Tang dated November 9, 2015



Tom Keeler <tpkeeler@gmail.com>

DPW & Korando OPA Appeal

Tom Keeler <tpkeeler@gmail.com>

Mon, Nov 9, 2015 at 4:19 PM

Reply-To: tpkeeler@gmail.com

To: Joyce Tang <jtang@civilletang.com>, Rob Weinberg <rob.weinberg@yahoo.com>

Cc: Glenn LeonGuerrero <glenn.leonguerrero@dpw.guam.gov>, Linda Hernandez <lhernandez@guamag.org>

Bcc: "joaquin.blaz" <joaquin.blaz@dpw.guam.gov>, "Karl P. Espaldon" <kespaldon@guamag.org>

Joyce,

I was just informed today that the information contained in DPW's Rebuttal Exhibit J was not included in the materials provided you in response to your FOIA Requests. While all requested emails, correspondence etc. were provided in response to your April 10, 2015 FOIA Request such was limited to "correspondence between DPW, Stanley, and/or Parsons' Transportation Group" and further limited to Submittal 562, that being the Revised Staging Plan. DPW Exhibit J memorialized a series of communications between Parsons BRINCKERHOFF International Inc. (PBI), and Stanley Consultants, Inc. ("Stanley").

While DPW and Parsons Transportation Group responded, and continues to respond, to the information requested we (i.e., I haven't seen any of this information other than the brief exchange concerning the crane, which I will forward on following this email) will want to review the PBI materials. On behalf of the Director, who I am cc'ing on this message, I have asked Parsons Transportation Group to expedite producing these emails, correspondence and attachments as soon as possible. You of course can submit a 5th FOIA request. I will monitor the production of this information and let you know shortly when you can expect to be provided the information.

Please address Rob Weinberg and I only when responding. Thanks.

Sincerely,

Tom Keeler

[Quoted text hidden]

C

EXHIBIT C

Email to Joyce Tang dated October 7, 2015

Sara Fitzpatrick

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 Cville of Cville & 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)

www.civilletang.com

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EXHIBIT D

Email to Assistant Attorney General Thomas Keeler dated November 3, 2015



Tom Keeler <tpkeeler@gmail.com>

DPW & Korando OPA Appeal

Joyce Tang <jtang@civilletang.com>

Tue, Nov 3, 2015 at 3:35 PM

To: tpkeeler@gmail.com, Rob Weinberg <rob.weinberg@yahoo.com>

Cc: Linda Hernandez <lhernandez@guamag.org>

Tom,

1. 10/5/2015 SUNSHINE ACT REQUEST REGARDING FEDERAL HIGHWAY FUNDED PROJECT STATUS AND REPORTS:

On Korando's behalf, we are amending Item No. 1 of Korando's Sunshine Act Request dated 10/5/2015. 5 GCA §10103 provides that "(e)very person has the right to inspect and take a copy of any

public document on Guam, except as otherwise expressly prohibited in law, and except as provided in § 10108 of this Chapter." There is nothing in the statute which requires Korando to limit the scope or withdraw its Sunshine Act requests.

In order to avoid further delays to production and reduce the burden on DPW, Korando will accept the following reports, in lieu of the seven categories of documents requested in Item 1 of the attached 10/5/2015 Sunshine Requests for all federally funded DPW construction projects from January 2010 (excluding "islandwide" projects such as the "Islandwide LED Signal Light Upgrade") to the present time:

- a. Construction Change Order Log
- b. Final Acceptance Checklist
- c. Final Change Order

2. 10/5/2015 SUNSHINE ACT REQUEST REGARDING FEDERAL HIGHWAY FUNDING AND COMMUNICATION:

In Item No. 5, Korando asked for "Any documents reflecting correspondence with any third party related to the expiration, renewal or extension of federal funding for Guam highway programs from March 2014 to October 5, 2015."

We received a response on 10/23/2015 stating that there are no documents relating to this request. I ask that you check DPW's records and confirm there are there are no communications

(emails, letters, documents) between DPW and third parties regarding the expiration, renewal, or extension of funding for federal highway programs between March 2014 – October 2015.

3. 8/10/2015 SUNSHINE ACT REQUEST

During the meet an confer, we asked DPW to confirm that there are no communications between: (1) DPW and Stanley; and (2) DPW and third parties, which have not already been produced in the Parsons emails. Please confirm by tomorrow 10:00 a.m. that no such communication (emails, letters, documents) exists.

I look forward to your response.

Sincerely,

Joyce Tang

From: Tom Keeler [mailto:tpkeeler@gmail.com]
Sent: Tuesday, November 3, 2015 7:30 AM
To: Joyce Tang; Rob Weinberg
Cc: Linda Hernandez
Subject: DPW & Korando OPA Appeal

Attached are some pdf files that have information regarding the notice of award, notice to proceed and the final completion date. The Change order log shows all of the change orders that were issued on the project. Also included is the final Change Order. This in essence is the "final Invoice" as it quantities all of the quantities on the project and the final contract amount. The only thing that is not included is the final submittal log. I believe these documents provide the report items you are interested in reviewing.

[Quoted text hidden]

3 attachments

 **Ltr. 10.5.2015.2 G. Leon Guerrero (Sunshine Act) re DPW Federal Highway Funded Projects.pdf**
32K

 **Ltr. 10.5.2015.1 G. Leon Guerrero (Sunshine Act) re Federal Highway Fund....pdf**
32K



Ltr. 8.10.2015 G. Leon Guerrero (Sunshine Act Request).pdf
33K