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RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

DATE: 12/7/15
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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,)	HEARING BRIEF OF APPELLEE
)	DEPARTMENT OF PUBLIC WORKS
and)	GOVERNMENT OF GUAM
)	
Department of Public Works)	
)	
Purchasing Agency.)	

I. INTRODUCTION

Appellant Korando Corporation (“Korando”) has appealed Contracting Officer Glenn Leon Guerrero’s July 10, 2015 decision to terminate the parties Bile/Pigua Bridge Reconstruction Project Contract (“Bile/Pigua Project”). Korando’s OPA Appeal presents a number of issues: (I) whether project delays were caused by Stanley Consultants, Inc. (“Stanley”), (II) whether the original phasing plan was flawed (III) if Stanley’s updating of submittal logs was improper and adversely impacted the director’s decision and (IV) whether DPW’s Director termination of Korando was

ORIGINAL

pretextual. DPW denies that delays, if any, caused by Stanley impacted Korando's prosecution of work on the Bile/Pigua Project, that the original phasing plan was flawed, that the updating of submittal logs was improper or that Korando's termination for non-performance was made in bad faith.

A. Bile/Pigua Project Delays

Testimony is expected to establish that Korando was requested on a number of occasions to submit a formal claim for a time extension detailing why it is entitled to time extension(s). Unfortunately Korando never filed a formal claim and testimony will establish that DPW is not able to analyze its claim.

Korando claims that it relied on Stanley's "approval" of the October 27, 2014 submittal (Critical 10-27-14 Submittal") and as such is entitled to a four (4) month delay. Korando's claim is incorrect in at least two (2) fundamental respects. First, Stanley was the Bile/Pigua Project's Construction Manager ("CM") and was not authorized to approve major change orders. By its own admission Korando recognizes that the 10-27-14 Submittal was critical and a major deviation from the Original Plans and Specifications. This obligated, and required Korando to submit a Proposed Change Order to the Contracting Officer. DPW expects the evidence to show that Korando was requested on a number of occasions that it was required to submit a written Proposed Change Order for the 10-27-14 Critical Submittal and that it failed or refused to do so. Also Korando is not entitled to a time extension prior to the January 5, 2015 Notice to Proceed. The evidence will establish that Stanley repeatedly reminded Korando of its obligation to submit the Proposed Change Order for not only the Critical 10-27-14 Submittal but other submittals (e.g., Relocation of GPA Power Lines underground, etc.).

DPW further expects the testimony to show that Korando was responsible for other Bile/Pigua Project delays and that DPW was willing to entertain Korando's time extension subject to it being presented as required by the contract terms and conditions.

B. Original Phasing Plan

In section B of its OPA Appeal Korando claims that the Original Phasing Plan ("Original Phasing Plan") produced by DPW was flawed. Korando will not be able to establish that the Phasing Plan was flawed.

Guam is a small island with the majority of FHWA funded road construction projects involving Guam Power Authority power lines ("GPA Lines"). The evidence will establish that these commonly encountered concerns with GPA Lines can be addressed in a number of ways, from relocating GPA power poles, to covering the GPA Lines, to coordinating with GPA to shut off the power to the affected area during non-peak times.

Further, while Korando correctly submitted concerns regarding the load capacities of the Bile/Pigua Project bridges, the evidence will establish that such were properly reviewed and entertained by PB but that it wrote Korando requesting additional information, which, similar to Korando's regular course of action on the Bile/Pigua Project, were not responded to.

Korando's Surety on the Bile/Pigua Bridge Reconstruction Contract, Westchester Fire Insurance Company ("Korando's Surety") signed a Takeover Agreement, effective November 18, 2015 ("Takeover Agreement"), to complete the Bile/Pigua Project using the *exact same plans and specifications that Korando agreed to use*. The importance of the Takeover Agreement, a copy of which is attached hereto as Exhibit "A", can't be over emphasized: If another contractor, presumably with full knowledge of Korando's objections and concerns, contracted to construct the

Bile/Pigua Project using the Original Plans and Specifications then how can the Original Phasing Plan be deficient? The obvious answer is that the Original Phasing Plan is good for a contractor who actually intends on constructing the project.

C. Stanley's Updating of Submittal Logs

As DPW's Director was not made aware of Korando's concerns with Stanley's updating of submittal logs such did not influence his decision to terminate Korando. In a September 8, 2015 letter Ms. Tang notified DPW's Director of Stanley's alleged misconduct. The evidence will show that as is his normal practice, DPW's Director delegated Ms. Tang's request to members of the Guam Transportation Group. Messrs. Mike Lanning and Keeler coordinated in drafting the department's draft internal memorandum, which was finalized by Mr. Blaz who concluded there weren't any good faith grounds to debar Stanley. Concerning the updating of submittal logs, Parsons Transportation Group's Mike Lanning has stated that the practice is not uncommon and will testify to the same.

D. DPW's Director Decision to Terminate Korando was made in Good Faith

There is no reasonable basis for claiming Korando's termination for non-performance was pretextual, that is made in bad faith. The testimony will show that Korando breached its contractual obligations throughout the Bile/Pigua Project and failed or otherwise refused to submit critical documents in a timely or complete manner. Further, when directed to submit Proposed Change Orders Korando regularly refused to do so.

The Guam Transportation Group, was formed in 2007 to provide policy direction and overall guidance to the goals and objectives of DPW's Guam Transportation Program. Members of the Guam Transportation Group include DPW's Director Mr. Glenn Leon Guerrero, DPW's Deputy

Director, Felix C. Benavente, the Federal Highway Administration's ("FHWA") Ms. Richelle Takara, a licensed Civil Engineer who has been working with FHWA for over twenty-three (23) years and has worked on or overseen over fifty (50) road and transportation projects. Parsons Transportation Group's Mr. Mike Lanning, who has been a licensed professional engineer for over thirty-one years and has worked on or overseen approximately seventy-five (75) road and transportation projects, and staff is also a member. The final members of the Guam Transportation Group are Mr. William ("Jeff") Wilson of Parsons Brinckerhoff International Inc. ("PB"), who has been a licensed Civil engineer for over twenty-three (23) years and has worked on or overseen in excess of (50) road and transportation projects, and PB's staff, as well as Assistant Attorney General Tom Keeler.

In a meeting in early March 2015 meeting of the group DPW's Director advised its members that he was concerned that there was little, if any, activity at the jobsite and that he was considering terminating Korando. The testimony will show that the Guam Transportation Group recommended that Korando not be terminated but that it be placed on notice of the Director's concerns and be urged to move forward on the Bile/Pigua Project. DPW's Director and the transportation group continued to monitor and discuss Korando's lack of progress on the Bile/Pigua Project at its regularly scheduled weekly meetings.

Testimony is expected to establish that only after a series of letters and meetings over a period of over three (3) months did the Group Transportation Group concur with DPW Director's decision to terminate Korando.

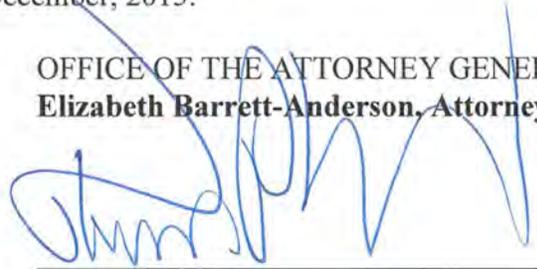
In closing, DPW Director's termination of Korando was based on Korando's numerous and ongoing defaults and was only made after a lengthy monitoring of its efforts and a number of

meetings designed to get Korando to perform work on the Bile/Pigua Project. Accordingly, Korando's OPA Appeal should be dismissed.

Respectfully submitted this 7th day of December, 2015.

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

By:



Thomas P. Keeler
Assistant Attorney General

EXHIBIT A

15-0706

TAKEOVER AGREEMENT

Principal: Korando Corporation
Surety: Westchester Fire Insurance Company
Obligee: Department of Public Works- Government of Guam
Project: Bile/Pigua Bridge Replacement (Construction Phase), Project No: GU-NH-NBIS(007)
Bond: K07901689

This *Takeover Agreement* (the "*Agreement*") is made this ___ day of _____, 2015, between **Department of Public Works- Government of Guam** ("DPW") and **Westchester Fire Insurance Company** ("WFIC") (DPW and WFIC shall collectively be referred to as the "Parties").

WHEREAS, DPW is an agency of Government of Guam and responsible for the construction of the **Bile/Pigua Bridge Replacement** project located in Guam (the "Project"); and

WHEREAS, on or about May 11, 2014, DPW awarded a contract ("*Contract*") to Korando Corporation ("*Original Contractor*"), for the Project; and

WHEREAS, in connection with the *Contract*, WFIC, as surety, issued its *Performance and Payment Bond*, number K07901689 ("*Bond*"), on behalf of Original Contractor, as principal, and in favor of DPW, as obligee, with a penal sum of \$3,665,559; and

WHEREAS, DPW has raised issues with Original Contractor's alleged failure to perform in accordance with the *Contract*, resulting in DPW issuing its formal declaration of Original Contractor's default dated July 10, 2015, and corresponding demand against WFIC under the *Bond*; and

WHEREAS, in an effort to mitigate damages by expediting the progress and completion of Original Contractor's obligations under the *Contract*, WFIC has obtained a proposal for the completion of the work from Core Tech International Corporation (the "*Completion Contractor*"); and

WHEREAS, the Completion Contractor represents to be ready, willing, and able to enter into a Completion Contract to complete the work (the "*Completion Contract*") in accordance with the Contract Documents; and

WHEREAS, in an effort to mitigate damages, WFIC is proceeding to undertake the completion of the *Contract* under a reservation of rights in accordance with the terms of the *Bond* and this *Agreement*, provided that it is assured that in so doing, WFIC will receive the *Contract* amounts hereinafter defined; and

WHEREAS, the Parties wish to memorialize their agreement, to ensure a diligent and workmanlike completion of the *Contract*.

NOW THEREFORE, in consideration of the promises, and other good and valuable consideration, and the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

FD 1115-9574

1. **Recitals.** The recitals are part of this *Agreement* as if fully set forth herein.
2. **Scope of Work.** WFIC, through its Completion Contractor and/or any other necessary persons or entities, hereby agrees to fully and faithfully perform and complete the specific scope of work identified in the *Contract* in accordance with the terms of the Contract Documents (the "Scope of Work"). The Contract Documents consist of the Instructions for Bidders, the General Contract Terms and Conditions, the Plans and Drawings, and any Special Contract Requirements and Specifications, and all addenda and modifications, all approved Changed Orders, which are listed in Exhibit "A" attached hereto and incorporated herein by this reference (the "Scope of Work"). DPW acknowledges that WFIC will arrange for the performance of the Scope of Work by retaining the services of the Completion Contractor and/or any other necessary persons or entities, and that WFIC's obligations under this *Agreement* and the *Bond* shall be satisfied upon completion of the work set forth in the *Contract*.
3. **Contract Balances and Retainage.** The original *Contract* price was \$3,665,559.00. No modifications have been issued and DPW has made no payments to the Original Contractor under the *Contract*. The parties have agreed that the undisputed remaining *Contract* balance available for WFIC's completion of the Scope of Work is in the amount of \$3,665,559.00 (the "Completion Funds").
4. **Tender of Completion Funds.** In consideration of WFIC entering into this *Agreement* and in accordance with the terms of the *Bond*, DPW shall pay to WFIC the Completion Funds available under the *Contract*, as and when same would have become due under the *Contract* but for the default of Original Contractor provided, however, that immediately upon execution of this *Agreement*, DPW shall pay to WFIC the amounts, if any, earned but not paid to the Original Contractor. Additionally:
 - a. WFIC, by and through its Consultant (see paragraph 9 below), shall submit its payment application to DPW in accordance with the terms and conditions of the *Contract*;
 - b. DPW shall pay WFIC in a prompt and timely fashion the proportionate amount of the Completion Funds based upon the quantity of the work completed in accordance with the *Contract*;
 - c. Payment of the Completion Funds shall not be withheld or delayed due to any discrepancy in the payment application or disputes between Original Contractor, WFIC and/or DPW under the *Contract*; and
 - d. Despite any disagreement by DPW with the claimed percentage of completion or any other aspect of the payment application, DPW will promptly pay the entire undisputed amount.
5. **WFIC's Use of Completion Funds.** Any and all payments received by WFIC under this *Agreement* will be utilized at WFIC's sole and absolute discretion to pay for the direct costs associated with the completion of the Scope of Work, to defray WFIC's losses and expenses in connection with satisfying any obligations under the *Bond*, or for any other purposes deemed

appropriate by WFIC. WFIC agrees to spend its own funds as may be necessary from time to time to pay for the completion of the Scope of Work *up to the penal sum of its Bond*, as provided for in paragraphs 12 and 15 hereof.

6. **Completion Date and Modification of Payment Terms.** As a result of the agreed extension of the contract period by 100 days, the new contract completion date is 550 calendar days from the initial Notice to Proceed which was issued to Korando on January 5, 2015.

7. **Partial Waiver of Delay Damages.** In consideration for WFIC taking over this project and for DPW's agreement to provide a 100 day time extension, the parties agree:

- a. DPW will provide WFIC a 100 day time extension as also reflected in paragraph 6 hereinabove; and
- b. To replace *Contract* reference and applicability of FAR Clause 52.232-27(a)(1)(i)(A) [Invoice Payments] with "Notwithstanding any other provision herein, approved invoices will be expedited with payment being processed in a 30 to 45 day period with interest calculated per Title 5, Guam Code Annotated Section 22503.

8. **Reservation of Rights.** Nothing in this *Agreement* is intended to nor shall be construed to be a release, waiver, estoppel or modification of any of the claims, rights and/or defenses, at law or in equity, as available to WFIC against Original Contractor and/or any of its corporate or individual indemnitors, under contract, by statute, or at common law.

Nothing in the *Agreement* is intended to nor shall be construed to be a release, waiver, estoppel or modification of any of the claims, rights and/or defenses, at law or in equity, as available against Surety or Original Contractor under contract by statute, or at common law, any and all rights of DPW being expressly reserved except as may be otherwise specifically stated herein.

9. **Designation of Surety's Completion Contractor and Consultant.** WFIC designates Samuel Reed of the Vertex Companies, Inc. as its representative of the Completion Contractor for the performance of this *Agreement*, and authorizes the Completion Contractor to represent WFIC in dealing with DPW on day-to-day construction issues related to the Project. Completion Contractor shall prepare, certify and submit all pay requisitions in accordance with the terms of the *Contract*. Prior to submitting same to DPW, Completion Contractor shall provide the pay applications to the Vertex Companies, Inc., as consultant for WFIC, for review and approval. The invoices shall be submitted in the name of WFIC, and DPW will issue all payment payable to WFIC and be transmitted to WFIC by wire transfer to the following account:

Account Name: Smart Devine Advisors PC/FBO ACE Westchester
Fire Ins Co/Korando Spec Acct
Account Number: 1256935675
Routing Number: 031000503
Routing Number for Incoming Wires: 121000248

Completion Contractor will supply DPW and WFIC with all records, documents, and information

reasonably available and necessary to properly verify the claimed completion costs.

The Consultant shall have, on behalf of WFIC, the authority to negotiate and sign change orders for extra work (beyond the Scope of Work) requested or required by DPW without WFIC's prior written approval, provided the extra work does not exceed Ten Thousand and 00/100 Dollars (\$10,000.00) and WFIC is given additional time to perform the extra work. If the extra work exceeds Ten Thousand and 00/100 Dollars (\$10,000.00) and/or WFIC is not given additional time to perform, then prior written approval by WFIC, and not the Consultant, shall be required. Notwithstanding such designation, the Consultant has no authority to negotiate deductive change orders, credits, backcharges or net deductions from the Completion Funds, or any nature whatsoever, without WFIC's prior written approval. Moreover, solely WFIC shall have the authority to make final decisions as relate to the completion of the Scope of Work.

10. **Use of Existing Equipment.** Insofar as DPW has any right, title, or interest therein, DPW agrees that WFIC and the Completion Contractor shall have the right to use, without charge, any of the equipment, materials and appurtenances furnished or supplied by Original Contractor and/or any of Original Contractor's subcontractors and suppliers. DPW shall act reasonably and cooperate with WFIC to the extent it is necessary to obtain the equipment, materials and other appurtenances as may be required to complete the Scope of Work.

11. **WFIC's Equitable Subrogation Rights.** Nothing contained in this *Agreement* shall in any way prejudice or waive the legal and equitable rights of subrogation of WFIC. So long as WFIC is fulfilling its obligations under the *Bond*, then WFIC is and shall be subrogated to all of the rights of Owner, DPW, and of laborers, subcontractors and suppliers to Original Contractor, and of Original Contractor in and to the Completion Funds and shall have the same right to utilize the Completion Funds for completion of the Project that DPW would have had if DPW were to have undertaken on its own the completion of the *Contract*.

12. **Bond Penal Sum Limitations.**

a. The total liability of WFIC under the *Bond* is limited to and shall not under any circumstances exceed the penal sum of the *Bond*. All payments properly made by WFIC shall be credited against the penal sum of the *Bond*. Nothing in this *Agreement* constitutes a waiver of such penal sum or an increase in the liability of WFIC under the *Bond*.

b. Without limiting the forgoing, DPW acknowledges that WFIC's total liability in performing the Scope of Work under this *Agreement* and in satisfying payment claims is strictly limited to, and shall not exceed, the penal sum of the *Bond*. WFIC shall be entitled to a dollar for dollar reduction from the penal sum of the *Bond* for any payments made by WFIC, to complete the Scope of Work under this *Agreement* or to pay payment claimants. DPW acknowledges that WFIC, by its execution of this *Agreement*, is acting in its capacity as surety for Original Contractor in making arrangements for the performance and completion of the Project, and not as a completing contractor, and that WFIC is not assuming any obligations or liabilities beyond those set forth in the *Bond*. DPW acknowledges and agrees that WFIC by entering into this *Agreement* does not abandon, waive, or alter its status as surety. In the event that WFIC expends the penal sum of the *Bond* in performance of the *Contract* and payments to payment claimants, DPW agrees that WFIC shall neither have further liability or obligation under the *Bond* nor with respect to any performance obligations assumed under this *Agreement*.

c. DPW acknowledges that so long as WFIC fulfills its obligations under the *Bond*, there is no fund to which any liens, claims, suits, demands, assignments, attachments or encumbrances of any third-party asserting non-payment by Original Contractor or its subcontractors, whenever submitted or filed, can attach in connection with the *Contract*. Accordingly, DPW agrees that the Completion Funds shall not be reduced or set off, and that no part of the Completion Funds shall be withheld from WFIC, on account of any liens, claims, suits, demands, assignments, attachments or encumbrances asserted by third-parties and/or Original Contractor against DPW.

13. **Dispute with Korando.** WFIC and DPW acknowledge that the Original Contractor has a pending dispute with DPW regarding the grounds and merits of DPW's termination, and Original Contractor also has or may in the future pursue various requests for equitable adjustment of the Contract time and Contract price which are pending, have been denied, or may be appealed or pursued administratively or in litigation. The Parties agree that the existence of this Agreement, WFIC's performance under the *Bond*, and any and all actions or inactions in connection with WFIC's takeover are subject to a full and complete reservation of rights, remedies and defenses of WFIC and Original Contractor in connection with the Contract and *Bond* in light of the various pending disputes between DPW and Original Contractor, which may or may not give rise to WFIC's exoneration or defenses to DPW's demands under the *Bond*; the sole purpose of the Parties entering into this Agreement being to mitigate damages in connection with the Contract. In the event WFIC determines that it may pursue claims against DPW related to the Contract, DPW's termination of Original Contractor, pending, denied, appealed or litigated requests for equitable adjustment, or this Agreement, nothing in this Agreement will be construed to prevent, hinder, alter or diminish such rights or remedies of WFIC; all of which rights and remedies shall remain, unaffected hereby.

14. **Timely Information.** Anything in the Contract to the contrary notwithstanding, DPW directly, or through its consultants, shall promptly and without unreasonable delay address all requests for information or other inquiries in writing with clear direction and all required information.

15. **Continuing Payment Bond Obligations.** The aforementioned *Bond* issued by WFIC in connection with the Project shall also remain in full force and effect according to its terms in connection with payment claimants, provided, however, that WFIC's total obligation shall in no event exceed, and is hereby expressly limited to, the expenditure of the penal sum of said *Bond*.

16. **No Admission of Liability.** This *Agreement* does not constitute an admission of liability on the part of either of the Parties.

17. **No Third-Party Benefits.** This *Agreement* shall only extend to and be binding upon the Parties hereto and their respective successors and assigns. Nothing contained in this *Agreement* shall create any third party beneficiaries to other claimants under the *Bond*, nor confer any benefit or enforceable rights under this *Agreement* other than to the Parties hereto and their respective successors, assigns, and reinsurers.

18. **Modifications to and Interpretation of Agreement.** This *Agreement* may not be modified unless in writing and executed by the Parties hereto. The provisions of this *Agreement*

shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the Parties, but, if for any reason any provision is unenforceable or invalid, such provision shall be deemed severed from this *Agreement* and the remaining provisions shall be carried out with the same force and effect as if the severed portion had not been a part of this *Agreement*.

19. **Merger.** This *Agreement* incorporates, includes, and supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this *Agreement* that are not contained in this *Agreement*. Accordingly, the Parties agree that no deviations from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

20. **Construction of Agreement.** The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this *Agreement* has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

21. **Cooperation.** The Parties agree to execute all such further instruments, and to take all such further actions as may be reasonably required by any Party to fully effectuate the terms and provisions of this *Agreement* and the transactions contemplated herein.

22. **Survival of Representations.** All covenants, warranties and representations contained in this *Agreement*, and all documents to be delivered by the Parties in connection with the consummation of the transaction contemplated herein, shall survive the consummation of said transaction.

23. **Notices.** All notices given under any of the provisions of this *Agreement* shall be deemed to have been duly given by DPW if sent via U.S. Mail and facsimile to:

WFIC:

Attn: Melissa Detrick
ACE North American Claims
436 Walnut Street WA10A
Philadelphia, PA 19106
Fax: 1-866-635-5687
Email: melissa.detrick@acegroup.com

With copies to:

Samuel Reed
The Vertex Companies, Inc.
1888 Kalakaua Ave., #313
Honolulu, HI 96815
E-mail: sreed@vertexeng.com

Thomas Sterling
Blair Sterling Johnson & Martinez
A Professional Corporation
238 Archbishop Flores St. Ste. 1008
Hagåtña, Guam 96910
E-mail: tcsterling@kbsjlaw.com

and shall be deemed to have been duly given by WFIC if sent via U.S. Mail and facsimile to:

DPW:

Felix C. Benavente
Department of Public Works
542 N. Marine Corps Dr.
Tamuning, Guam 96913
E-mail: felix.benavente@dpw.guam.gov

With copies to:

Joaquin "Kin Blaz
Highways Division
Department of Public Works
542 N. Marine Corps Dr.
Tamuning, Guam 96913
E-mail: joaquin.blaz@dpw.guam.gov

Thomas P. Keeler
c/o Highway Division
Department of Public Works
542 N. Marine Corps Dr.
Tamuning, Guam 96913
E-mail: tpkeeler@gmail.com

or at such other address as each of the foregoing may designate in writing by registered or certified mail to the other.

24. **Applicable Law and Venue; Waiver of Jury Trial.** The Parties hereto acknowledge and agree that this *Agreement* shall be interpreted and construed in accordance with and governed by the laws of Guam. Any controversies or legal problems arising out of this *Agreement* and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction and venue of any court of competent jurisdiction in Guam. If it becomes necessary for either of the Parties hereto to apply to a court of competent jurisdiction for the enforcement of this *Agreement*, the Party determined by such court to be the prevailing party shall be entitled to recover from the other Party all reasonable costs, including attorneys' fees (pre-litigation, and litigation at trial and appellate levels) and expenses associated with expert witnesses, travel, and the like. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION THAT IT MAY ARISE HEREUNDER, EACH PARTY HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO TRIAL BY JURY OF ANY SUCH LITIGATION.

25. **Amendment of Agreement.** This *Agreement* shall not be assigned, changed, amended or altered in any way without the written consent of each of WFIC and DPW.

26. **Assignment of Rights.** To the extent WFIC makes any payments under this *Agreement* and/or the *Bond*, DPW assigns all of its rights and remedies against Original Contractor, to the extent of such payments, to WFIC.

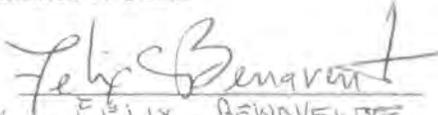
27. **Binding Effect.** This *Agreement* shall be binding upon the parties and their respective successors and assigns.

28. **Illegality.** In the event that one or more provisions of this *Agreement* shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this *Agreement* shall not in any way be affected or impaired thereby.

29. **Counterpart.** This *Agreement* may be executed in one or more counterparts, each of which, when executed and delivered, shall be deemed to be an original, but such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals to this *Agreement* the day and year first set forth above, and the individuals who execute this *Agreement* personally represent and warrant that they have full authority to execute this *Agreement* on behalf of the respective Parties.

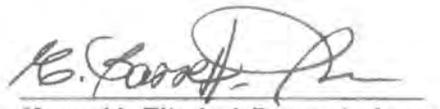
**Department of Public Works
Government of Guam**

By: 
Name: FELIX BEVAVENTE
Title: DEPUTY DIRECTOR
Date: 10-23-15

Westchester Fire Insurance Company

By: _____
Name: _____
Title: _____
Date: _____

Office of the Attorney General

By: 
Name: Honorable Elizabeth Barrett Anderson
Title: Attorney General
Date: 11/9/15
CPW 15-0706

Government of Guam

By: 
Name: Honorable Eddie Baza Calvo
Title: Governor of Guam
Date: NOV 18 2015

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**Department of Public Works
Government of Guam**

By: _____
Name: _____
Title: _____
Date: _____

Office of the Attorney General

By: _____
Name: Honorable Elizabeth Barrett Anderson
Title: Attorney General
Date: _____

Westchester Fire Insurance Company

By: Melissa M. Detrick
Name: Melissa M. Detrick
Title: Claims Specialist
Date: 10/23/15

Government of Guam

By: _____
Name: Honorable Eddie Baza Calvo
Title: Governor of Guam
Date: _____

EXHIBIT A – Contract Documents

Invitation and Notice to Bidders, including all items listed in the Invitation to Bid section of the proposal document Table of Contents.

INVITATION AND NOTICE TO BIDDERS, REQUIRED FORMS AND AFFIDAVITS

INVITATION FOR BID	IFB-1
INSTRUCTIONS TO BIDDERS	7 PAGES
NOTICE TO BIDDERS	2 PAGES
GOVERNOR'S EXECUTIVE ORDER NO. 2012-04	2 PAGES
REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID	
CONSTRUCTION CONTRACTS	RCP 1-21
EXECUTIVE ORDER 11246 – EQUAL EMPLOYMENT OPPORTUNITY	EO 1-7
LABOR STANDARDS	5 PAGES
DOCUMENT 00831 – DHCD STATEMENT OF WAGE RATE COMPLIANCE	3 PAGES
APPLICABILITY OF PREVAILING WAGE RATE REQUIREMENTS TO FEDERAL-AID	
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MINIMUM WAGE RATES	
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Plans and Drawings for: "Bile / Pigua Bridge Replacement (Construction Phase) Project No.: GU-NH-NBIS(007)" dated November 25, 2013, prepared by Duenas Camacho & Associates, Inc.

Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects (FP-03)

Specifications & Special Contract Requirements for: "Bile / Pigua Bridge Replacement (Construction Phase) Project No.: GU-NH-NBIS(007)" dated November 25, 2013, prepared by Duenas Camacho & Associates, Inc.

Addendum #1, dated December 18, 2013

Addendum #2, dated January 9, 2014

Addendum #3, dated January 22, 2014

Addendum #4, dated February 5, 2015

Addendum #5, dated February 11, 2015

Bid Schedule as submitted by Korando Corporation