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FILE NO OPA-PA: 16-002

IN THE OFFICE OF THE PUBLIC AUDITOR

In the Appeal of

1-A GuamWEBZ,

Appellant

DOCKET NO. OPA-PA -16-002

**APPELLANT GUAMWEBZ'S OPPOSITION  
TO PURCHASING AGENCY'S MOTION TO  
STRIKE PAGES 1-3 OF APPELLANT'S  
BRIEF REGARDING REMEDIES**

Appellant 1-A GuamWEBZ ("GuamWEBZ") herein provides its Opposition as captioned above.

GCC's motion argues purely form over substance and should be disregarded. It is axiomatic that "rights and remedies are intertwined." *Veasey v. Abbott*, 796 F. 3d 487 - Court of Appeals, 5th Circuit 2015; Pg 37. As a general matter, a tribunal must "set forth findings of fact and conclusions of law which constitute the grounds of its action... when modifying a temporary injunction [e.g., determining the appropriate remedy]." *Tambra Jo Swonger V. James Henry Swonger*; Appeal from the Circuit Court for Knox County Nos. 128217, 129498. In a holding evaluating the parties' proposed remedies, "[a] factual recitation ...is not meant to supplant or amend the actual findings of fact and conclusions of law contained in this Court's prior opinion

on liability. This summary is included in an effort to give context to the Court's present ruling on damages.” FN 2, 404 BR 150 - Dist. Court, SD Texas 2009.

There is no dispute that the Hearing Officer did not *explicitly* request proposed findings of fact or conclusions of law. Thus, as acknowledged at the outset of its remedies brief submitted, “In order to provide a factual and legal basis for its proposed remedies, GuamWEBZ also provide[d] proposed findings of fact and conclusions of law (not intended as exhaustive).”

In any event, on each and every page of its remedies brief, GCC argued, and thus proposed, several factual assertions (i.e. findings) and legal conclusions<sup>1</sup> which were *also* not explicitly permitted. Why did GCC do this? It is axiomatic that a proposed remedy cannot be meaningfully discussed without premising them upon specific factual and legal grounds. The only difference between GuamWEBZ’s and GCC’s briefs is that GuamWEBZ was intellectually honest enough to call them what there were - the factual findings and legal conclusions upon which the proposed remedies were based. A Brief must explain the premises for its conclusions. By GCC’s logic, every page of its remedies brief should be stricken because GCC proposed legal and factual assertions as premises for its proposed remedies.

If GuamWEBZ in good faith misinterpreted the Hearing Officer’s order, its proposed findings of fact and conclusions of law, none of which introduced any new factual or legal arguments, can be disregarded without prejudice to GCC. There is no reason to give GCC yet

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<sup>1</sup> See Purchasing Agency’s Remedies Brief at:

Pg 2: “GuamWEBZ failed to meet its burden...the evidence [failed to] establish a violation...GCC properly awarded the contract...the Local Preference Statute...does not apply in the instant case...GuamWEBZ’s bid prices do not fall within the range...”

Pg 3: “any violation...would be minor and would not inflict any prejudice...[the] proposals were properly reviewed and evaluated...there are no grounds for bad faith or fraud [GuamWEBZ notes here that it presented evidence of such] ...[waiving any violation] will not prejudice any bidder; which is] in the best interests of GCC, and therefore the Territory...substantial resources have been expended [GuamWEBZ notes here that this is a new fact asserted without evidence]

Pg 4: “there was no violation of law”

Pg 5: “the material grounds of both GuamWEBZ’s bid protest and appeal lack merit.”

more *exhaustive* briefing on petty issues. This is especially true in light of the fact GCC has already in fact proposed the legal and factual findings upon which its preferred remedies are based. GuamWEBZ respectfully requests that GCC's motion be denied.

Respectfully submitted this 14<sup>th</sup> day of July, 2016.

A handwritten signature in cursive script, appearing to read "JRBell".

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John Richard Bordallo Bell, Esq.  
*Attorney for Appellant GuamWEBZ*