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 Attorneys for the Government of Guam

RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

DATE: 02-12-18
 TIME: 4:32 AM PM BY: [Signature]
 FILE NO OPA-PA: 18-002

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

<p>IN THE APPEAL OF:</p> <p>KORANDO CORPORATION,</p> <p style="padding-left: 100px;">Appellant.</p> <p style="padding-left: 100px;">And</p> <p>DEPARTMENT OF PUBLIC WORKS,</p> <p style="padding-left: 100px;">Purchasing Agency.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>DOCKET NO. OPA-PA-18-002</p> <p>PURCHASING AGENCY ATTORNEY / CLIENT CONFIDENTIAL COMMUNICATION LOG SHEET</p>
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Comes now, Department of Public Work ("DPW"), and through its undersigned counsel, herein submits the Attorney/Client Confidential Communication Log Sheet on Bile/Pigua Bridge Replacement Project, Merizo, Project No. GU-NH-NBIS(007).

<u>Date of Communication:</u>	<u>To:</u>	<u>5 GCA Chapter 10 Exemption</u>
09-09-15	DAG Espaldon	§10108(a); 10108(i)-attorney-client Privilege; attorney work product privilege

Email re Ms. Tang's 09-08-15 Letter and OPA Appeal and Proj. Status Report

ORIGINAL

09-30-16 Joaquin Blaz, DPW §10108(a); 10108(i) attorney client
privilege; attorney work product
privilege

Email re: Korando's Project Status

11-14-16 DAG Espaldon §10108(a); 10108(i) attorney-client
privilege; attorney work product
privilege

Email re Project's contractor Request for bridge reports and Issues related thereto

12-17-16 AAG Kathy Fokas §10108(a); 10108(i) attorney-client
privilege; attorney work product
privilege

Email coordinating on proposed Meeting to discuss Cruz Condemnation

01-03-18 Joaquin Blaz,
DPW Highway Div. §10108(a); 10108(i) attorney-client
privilege; attorney work product
privilege

Cruz Condemnation –Recommendation re Witnesses for Condemnation Case

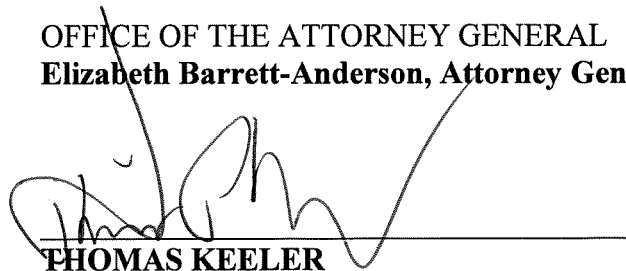
01-11-17 Joaquin Blaz,
DPW Highways Div. §10108(a); 10108(i) attorney-client
privilege; attorney work product
privilege

Cruz Condemnation-Reduction of area needed to be Condemned

Dated this 12th day of February, 2018.

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

By:



THOMAS KEELER
Assistant Attorney General

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Bile/Pigua Bridge Reconstruction - Korando

Tom Keeler

You replied on 9/10/2015 1:28 PM.

Sent: Wednesday, September 09, 2015 12:17 PM**To:** Karl P. Espaldon**Cc:** Alisa Munoz**Attachments:** 09-08-15 Tang letter to G~1.pdf (40 KB) (Open as Web Page); 9-08-15 Korando Appeal.pdf (501 KB) (Open as Web Page)

Karl,

I have kept you updated on DPW's termination of Korando on the above referenced project. At the time of termination 38% of the contract time had elapsed with Korando having performed up to 5% of the work, which primarily consisted of mobilizing for the project. Only 1% of the permanent work was completed. Korando is represented by Joyce Tang who, as anticipated, filed an appeal to the OPA, a copy of which is attached hereto. Joyce also wrote the Director requesting that Stanley Consultants, the department's construction consultant on the project, be disbarred. I plan on handling the letter to the Director under recently opened PCF DPW 15-0418 (Korando termination) but would appreciate the OPA appeal to litigation. Alisa, who is cc'd on this message, has been asked to open a separate appeal file. I have also provided her with a # of file documents (e.g., notice of termination, etc.) for the new file.

Korando places the fault for its termination on Stanley, which I don't believe is the case. Included in the dox to Alisa is a 9/4/15 letter from Stanley's Jack Marlowe that addresses Korandos allegations.

Also, fyi both the letter to the director and appeal to OPA spend a fair amount of time asserting that Stanley shouldn't be on the takeover portion (DPW made a demand that Korando's surety perform the contract or forfeit the project's bond. The surety is working with the department and is scheduled to receive bids from contractors to take over and complete the project this Thursday or Friday). While the department doesn't need a defaulting contractor to demand that a consultant be removed from a project, DPW, for a variety of reasons including but not limited to Korando's threat of litigation, notified Stanley this past Friday (formal written notice went out yesterday) that it would be using a different consultant for the takeover agreement. Thus, portions of Ms. Tang's letter to the director and appeal to the OPA were moot before filing.

Please call if any questions. We can also discuss either before or after Friday's 2pm conference re the draft amendments to the procurement code.

ALISA, please calendar the deadline, along with a 3 day prior notice, for responding to Korando's appeal for both Karl and me.

Thanks,

Tom

1 JOYCE C.H. TANG
2 CIVILLE & TANG PLLC
3 330 Hernan Cortez Ave. Ste. 200
4 Hagatna, Guam 96910
5 Tel: (671) 472-8868/69
6 Fax: (671) 477-2511

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 9/8/15

TIME: 4:45 AM PM BY: AG

FILE NO OPA-PA: 15-009

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

10
11
12 In the Appeal of
13
14 Korando Corporation,
15 Appellant.

DOCKET NO. OPA-PA-15 _____

NOTICE OF APPEAL AND
VERIFICATION

CIVILLE & TANG, PLLC

www.civilletang.com

Sender's Direct E-Mail:
jtang@civilletang.com

September 8, 2015

VIA HAND DELIVERY & EMAIL

Mr. Glenn Leon Guerrero
Director
Department of Public Works
Dipattamenton Che'Cho' Pupleko
542 North Marine Corps Drive
Upper Tumon, Guam 96913

**Re: REQUEST TO TERMINATE CONTRACT AND TO DEBAR STANLEY
CONSULTANTS, INC. (GU-NH-PCMS (002))**

Dear Mr. Leon Guerrero:

Following review of DPW's partial response to Korando Corporation's ("Korando") Sunshine Act Request to DPW dated August 10, 2015, Korando believes that it was wrongfully terminated for cause because: (1) Stanley Consultants, Inc. ("Stanley") acted improperly when it altered the Submittal Logs to cover up its mistakes as stated in its letter of August 7, 2015; (2) Korando has reasons to believe that the stated grounds for termination were pretextual; and (3) Stanley's actions caused substantial delays to the project prior to Korando's termination, and after the termination. These wrongful acts by Stanley have caused substantial monetary damages to Korando.

Today, Korando filed its appeal of DPW's termination of Korando's contract with the Office of Public Accountability in the case entitled In Re Appeal of Korando Corporation (OPA-PA-15-009) ("Korando Appeal"), asking the OPA to find that the Korando Contract was wrongfully terminated, and asking the OPA to terminate the Korando Contract for convenience. A copy of the Korando Appeal without the referenced exhibits is attached for your reference.

REQUEST TO TERMINATE TASK ORDER NO. 5 **(GU-NY-PCMS(002))**

It is our understanding that Westchester Fire Insurance Company ("Westchester") has encountered difficulty obtaining bids for the project, due in large part to Stanley's continuing participation and involvement in this project. Stanley has developed a reputation on Guam of being extremely unreasonable and difficult to work with on projects; there is a perception in the contracting community that projects encounter more delays due to difficulties dealing with Stanley. Stanley's practice of approving submittals, only to revoke approvals months later, without any notice, renders it impossible for any contractor to properly estimate the cost of a project with liquidated damages, or

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RE: Bile/Pigua Bridge Reconstruction - Korando
Tom Keeler

Sent: Monday, September 14, 2015 11:02 AM
To: Karl P. Espaldon
Cc: Alisa Munoz

Karl,

I assume that you are in receipt of Korando's appeal to the OPA. I am overseeing organizing the department's procurement/contract record, which needs to be filed in the next day or so. Please advise who the appeal is being assigned to.

Alisa, as noted above, the record is not being filed today. Please give me a call at 649-3152 or on the cell at 486-8577. Thanks.

Tom

From: Karl P. Espaldon
Sent: Thursday, September 10, 2015 3:02 PM
To: Tom Keeler
Cc: Alisa Munoz
Subject: RE: Bile/Pigua Bridge Reconstruction - Korando

Tom, let's talk tomorrow before or after the meeting.

-----Original Message-----
From: Tom Keeler
Sent: Thursday, September 10, 2015 1:24 PM
To: Karl P. Espaldon
Cc: Alisa Munoz
Subject: RE: Bile/Pigua Bridge Reconstruction - Korando

Karl,

The procurement code obligates DPW to conduct a prompt investigation when the public (i.e., Joyce Tang) has requested that a contractor be debarred. DPW's Director Glenn Leon Guerrero has asked me to investigate and prepare a report but wants to make sure such is ok with you and the office. If not already in receipt of your instructions we can review before or after tomorrow's 2pm hearing. Thanks.

Tom

From: Tom Keeler
Sent: Wednesday, September 09, 2015 12:17 PM

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RE: DPW & Korando OPA Appeal

Tom Keeler

Sent: Tuesday, September 15, 2015 2:31 PM**To:** Marie L. Cruz; Sharon Rodriguez

Marie,

Rob W. will be handling the appeal. Once you've talked to Michelle and sent a confirming email please also cc Rob. If you prefer I can send the email however need 1) Michelle's email address and 2) confirmation from her that no filings are needed from the office until the scheduling order is issued. Am hoping this can be handled by cob today. Please touch base if any questions. Thanks again.

Tom

From: Marie L. Cruz
Sent: Tuesday, September 15, 2015 12:59 PM
To: Tom Keeler
Subject: RE: DPW & Korando OPA Appeal

okay

-----Original Message-----

From: Tom Keeler
Sent: Tuesday, September 15, 2015 11:18 AM
To: Marie L. Cruz
Cc: Sharon Rodriguez
Subject: RE: DPW & Korando OPA Appeal

Marie,

I VERY MUCH appreciate the assistance. Can I pester you for 1 more item and request that the office send a confirming email to Michelle, with a cc to me as well as Karl, that there is no scheduling order at this time and that the government is not required to file a copy of the procurement/contract record until the case is assigned to a hearing officer and the Scheduling Order issued. Thanks but I want to make sure there is a clear record. Again, many thanks.

Tom

From: Marie L. Cruz
Sent: Tuesday, September 15, 2015 11:12 AM
To: Tom Keeler
Cc: Sharon Rodriguez
Subject: FW: DPW & Korando OPA Appeal

Tom: I spoke to Michelle from OPA, she confirms there is no Scheduling Order at this time, this case is in the process of being

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Tom Keeler

Sent: Monday, October 19, 2015 10:54 AM

To: Ken Orcutt; Karl P. Espaldon; Rob Weinberg; Alisa Munoz

Attachments: 10-16-15 Letter to Ms. T~1.docx (44 KB) [Open as Web Page]

Gents,

Attached is a DRAFT letter to Joyce Tang that I've prepared for the Director's signature. While Joyce hasn't responded to my 3 or more requests that she withdrawal her 2 most recent requests I think it appropriate that the Director document the cost and time frame needed to respond. Comments?

Tom

October 16, 2015

Via Hand Delivery and E-Mail

Joyce C.H. Tang
330 Hernan Cortez Avenue, Suite 200
Hagatna, Guam 96910

Re: Korando Corporation vs. Department of Public Works; OPA-PA-15-009
Sunshine Act Request to DPW regarding Federal Highway Funding

Ms. Tang:

I will keep this brief as it appears there is little I can do to dissuade you or your firm, Civile & Tang, from its course of undermining the Department of Public Works (DPW) operations, as opposed to focusing on the merits of Korando Corporations above referenced (Korando) appeal to the OPA. I make this statement based on Civile & Tang's two (2) most recent FOIA requests, which appear to have virtually no relationship to the OPA Appeal, and its failure to respond to any of Assistant Attorney General Thomas P. Keeler's numerous requests that you narrow the scope of the requests, none of which, as I understand, have been responded to.

Nonetheless I am compelled on behalf of DPW and the Government of Guam to follow-up on AAG Keeler's requests. In order to make sure there is no misunderstanding as to the extent of damage caused by your third and fourth FOIA requests, Mr. Mike Lanning, PTG (i.e., a Civile & Tang's client), states that as of October 9, 2015 labor costs and research/collect and assembly costs are estimated to be just under Five Thousand Dollars (\$5,000). Mr. Lanning, PTG, further states that for DPW to properly respond to Civile & Tang's 4th FOIA request requiring information on federally funded DPW highway projects from 2010 to October 5, 2015, PTG:

“will take a substantial amount of time to complete. My estimate based on what we have already done on one project is that 1000 labor hours will be needed to complete the request. This is equivalent to 2 full time persons working for nearly 63 working days or approximately just under 3 months. My estimated labor costs for this one request is \$32,550 but it may end up being higher.”

Thus, as of this letter Civile & Tang's unreasonable and over burdensome FOIA requests will (1) cost DPW between Thirty Five Thousand to Forty Thousand Dollars (\$35,000 to \$40,000); (2) provide little (if any) benefit to Korando's OPA Appeal; and (3) cause a substantial disruption to PTG's day to day operations, which is allocating approximately twenty percent (20%) of its staff to respond to Civile & Tang's, that is its own legal counsels, FOIA requests.

In closing, demand is hereby made that you withdrawal your two (2) most recent requests and resubmit them, assuming such is appropriate, narrowing the scope of the requests to matters reasonably related to Korando's OPA Appeal. Assuming you refuse to withdrawal the requests demand is further made that you explain the relevancy of requiring DPW to provide essentially all documentation related to thirty (30) or so FHWA funded projects for the past five (5) years.

Please contact me if you have any questions regarding this matter.

Sincerely,

Glenn Leon Guerrero

cc: Elizabeth Barrett-Anderson, Attorney General of Guam
Mr. Felix C. Benavente (*via email only*)
Joaquin Blaz (*via email only*)
Thomas P. Keeler, Assistant Attorney General (*via email only*)

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Tom Keeler

You replied on 12/16/2015 9:33 AM.

Sent: Wednesday, December 16, 2015 9:23 AM
To: Glenn LeonGuerrero [glenn.leonguerrero@dpw.guam.gov]; Richelle.TAKARA@dot.gov; joaquin.blaz [joaquin.blaz@dpw.guam.gov]; Rob Weinberg; Linda Hernandez
Attachments: 12-16-15 DPW - Korando DR~1.docx (24 KB) [Open as Web Page]

Folks,

Yesterday afternoons meeting didn't go great however the case may still settle. Attached is a draft Stipulation and Order. The major hurdle is Ms. Tang's requirement that DPW agree in advance to 3 change orders, which are listed in Section 5. I've explained that Korando has yet to establish that the original plans can't be constructed and that the change orders have to be submitted and processed as provided in the contract. 5b and 5c need to be processed however I am wondering if there is any representation that can be made (agreed to) re 5a's demobilization and remobilization item. I believe being able to make some of commitment re this item will greatly facilitate settlement.

Your expedited review and comments are greatly appreciated. Call if any questions. Thanks.

Tom

IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

DOCKET NO. OPA-PA-15-009

Korando Corporation,

Appellant.

**STIPULATION AND ORDER REGARDING
RESCISSION OF TERMINATION OF
KORANDO CORPORATION ON THE
BILE/PIGUA BRIDGE REPLACEMENT
PROJECT (GU-NH-NBIS(007))**

The Department of Public Works, Government of Guam (“DPW”) and Korando Corporation (“Korando”), by and through its respective undersigned counsel, hereby jointly submit this Stipulation and Order Regarding Rescission of Termination of Korando Corporation on the Bile/Pigua Bridge Replacement Project (GU-NH-NBIS(007)) (“Project”).

The parties stipulate as follows:

1. DPW will rescind the July 10, 2015 termination of Korando and Korando agrees to complete the Project in accordance with the parties' Bile/Bridge Replacement Contract dated June 10, 2014 ("Korando's Contract"), as revised by this Stipulation.

2. The Project will have a new start date of January [REDACTED], 2016 ("New Start Date"). Korando will have the full 450 days in which to complete the Project (excluding any extension of time approved after the New Start Date) on the terms and conditions contained in Korando's Contract, as revised by this Stipulation.

3. Liquidated damages are hereby waived through the New Start Date.

4. DPW will immediately coordinate with the Project's Surety to withdraw its written instructions to withhold payment of Korando's previously approved First Payment Application for the sum of [\$200k], which amount, less *retainage*, shall be paid to Korando in an expedited manner.

5. Upon the signing of this Stipulation Korando can submit written Proposed Changed Orders in accordance with the terms and conditions of the parties' Contract. DPW agrees that it will review and process the Change Orders timely and in good faith, and in accordance with the terms of the Contract:

a. Demobilization and remobilization costs, performance bond related expenses, together with payments due for work completed and materials ordered or in store through July 10, 2015. The parties agree that this amount will be no less than \$500,000 and will not exceed \$675,000.

b. Korando's Alternate Phasing Plan requires the construction of a new temporary steel bridge ("New Steel Bridge") due to the inadequacy of the existing temporary

steel bridges. Korando will submit a change order for all costs associated with the New Steel Bridge as proposed in Submittal No. 562.001-02.

c. DPW acknowledges that there is a conflict between the existing overhead power lines and the operation of the crane when hoisting and positioning the piles during the pile driving operation, as depicted in DPW's construction documents. DPW further agrees that the re-routing of the overhead power lines shown in the DPW construction documents do not resolve this conflict. Because this is a DPW/owner design issue, DPW will be responsible for: (i) finding a constructible solution, redesigning and providing the new plans to address this conflict; and (ii) contacting GPA and third party communication providers. After DPW and Korando agrees to a constructible solution, Korando will submit a change order for all additional costs and an extension of time (if the resolution of the conflict by DPW delays the Project) associated such work.

6. DPW agrees that it will act in good faith for TG Engineers to remain as the Construction Manager on the Project.

7. Korando agrees that it will act in good faith for Mr. Farrell to remain as a consultant on the Project.

8. The parties waive any claims as to each other arising from DPW's termination of Korando with each party being responsible for their own costs and attorney's fees.

9. The OPA shall retain jurisdiction to resolve any and all disputes arising from or related to this Stipulation and Order.

SO STIPULATED on this ____ day of December, 2015

CIVILLE & TANG PLLC

JOYCE C.H. TANG
Attorneys for Korando Corporation

THE GOVERNMENT OF GUAM
Department of Public Works

THOMAS P. KEELER
Assistant Attorney General

GLENN LEON GUERRERO
Director, DPW

ORDER

Pursuant to the foregoing Stipulations made by the parties, it is hereby ORDERED that DPW's termination of Korando's Contract is hereby RESCINDED, and the terms of the above Stipulations are hereby incorporated into and made a part of this Order.

SO ORDERED this _____ day of December, 2015.

ANTHONY R. CAMACHO
Hearing Officer

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RE: DPW & Korando's OPA Appeal

Tom Keeler

Sent: Wednesday, December 16, 2015 1:40 PM

To: Karl P. Espaldon; Ken Orcutt; Rob Weinberg; Linda Hernandez; Marie L. Cruz

I would appreciate Karl or Ken calling ASAP re settlement issue ---
OPA Hearing recommences at 3pm.

Marie and Linda, please assist in bringing this to their attention.
Tx.

Tom
Cell 486-8577

From: Karl P. Espaldon
Sent: Wednesday, December 16, 2015 11:17 AM
To: Tom Keeler; Ken Orcutt; Rob Weinberg; Linda Hernandez
Subject: RE: DPW & Korando's OPA Appeal

Thanks for the update, Tom.

For this case, I don't think you are going to need formal approval from the office if your client agrees; however, I will inform the AG that there is possible settlement in this case and will let you know if she has any concerns or objections (which I don't think she will.)

Karl

-----Original Message-----

From: Tom Keeler
Sent: Wednesday, December 16, 2015 9:31 AM
To: Karl P. Espaldon; Ken Orcutt; Rob Weinberg; Linda Hernandez
Subject: DPW & Korando's OPA Appeal

Gents,

The OPA hearings conclude later today (3pm to whenever). There are a number of factors involved however the parties are discussing settlement. Attached is a draft Stipulation and Order. The major hurdle is Ms. Tang's requirement for 3 change orders, which I've advised need to be processed as provided in the contract. 5b & 5c can't be agreed to however I am trying to see if anything can be done with 5a---remobilization costs.

I will keep you posted on any developments however please advise if I need to obtain formal approval from the office, assuming DPW and FHWA authorize the settlement. Thanks.

Tom K.

PRIVATE/CONFIDENTIAL

MEMORANDUM

December 17, 2015

From: Thomas P. Keeler
Assistant Attorney General

To: Glenn Leon Guerrero
Director, DPW

Felix C. Benavente
Deputy Director, DPW

Karl P. Espaldon
Deputy Director, Solicitor's Division
Office of the Attorney General

Re: Settlement of Korando Corporation's OPA Appeal of DPW's Decision to Terminate Work on the Bile/Pigua Bridge Reconstruction Project
OPA Case No. OPA-PA:15-009

Attached to this memorandum is a copy of the parties Stipulation and Order signed by the parties counsel and so Ordered by the Public Auditor Doris Flores Brooks on December 16, 2015. While DPW's Director, acting in conjunction with the Guam Transportation Group, acted in good faith and did not decide to terminate Korando until after a four (4) month long series of meetings and evaluation of Project delays evidence was nonetheless presented in the proceedings that raised equitable considerations for the OPA to consider. In particular was the construction manager's practice of updating the Project's Submittal Logs. While this was done in good faith and only required that contractor do what it was already contractually obligated to do the change of status technically served to withdraw the original approval (e.g., Korando's proposed Alternate Phasing Plan that was approved on November 4, 2014 with a "EAN" (exceptions as noted) was updated on March 1, 2015 to "Revise/Resubmit"), which effectively meant that the contractor's alternate phasing plan was no longer formally approved*. As the construction manager notified contractor of these changes via transmittal memo it had ample opportunity to object during the construction phase and/or to submit a Proposed Change Order, none of which it did. There were additional items that could be argued created additional equitable concerns.

A break in testimony allowed me an opportunity to reanalyze the pros and cons of the termination and whether it was in the best interests of the government to rescind termination. These items included, but are not limited to, the following:

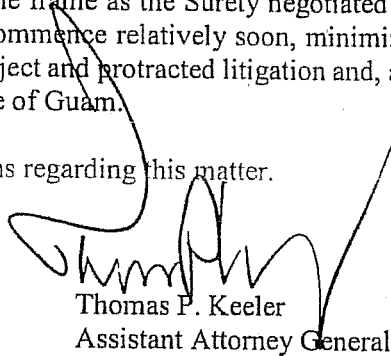
- Korando has retained the services of an experienced and highly qualified engineer, Mr. Keith Farrell, who under Section 7 of the Stipulation and Order remains as a consultant on the Project.

*The updating of Submittal Logs is not a best practices act and I recommend the practice be discontinued. Regarding the current case the need for any past due submittals and plans could have been addressed by correspondence instructing Korando that they be submitted within a certain time frame.

- It was a given that whichever party prevailed in the OPA Appeal that the parties would continue to incur substantial costs and be involved in protracted appeals and legal proceedings.
- The Surety signed a takeover agreement however even though a Notice to Proceed issued in mid-November it appears only minor preliminary work has been performed.
- In its OPA Appeal Korando was seeking that its termination be determined to be a Termination for Convenience. If the OPA had ruled this way it is likely, but not certain, that the Surety would have continued work and completed the Project. The risk however that the Surety might not complete the Project, which would have resulted in claims and actions and, most importantly, further delays in completing the Project, by both the Surety and takeover contractor, warranted exploring settlement.
- While not without issues Korando's work on the Route 26/25 Intersection Improvements Project has shown that with the proper staffing and management that it is capable of performing the work.

In closing, there are additional considerations however the parties settlement gets the Project completed in the same general time frame as the Surety negotiated with the takeover contractor, provides for construction to commence relatively soon, minimizes the possibility of further delays in construction of the Project and protracted litigation and, as the OPA stated, is clearly in the best interests of the people of Guam.

Please contact me if you have questions regarding this matter.



Thomas P. Keeler
Assistant Attorney General



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tkeeler@guamag.org
tpkeeler@gmail.com
Attorneys for Defendants

IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of)	DOCKET NO. OPA-PA: 15-009
)	
KORANDO CORP.)	
Appellant,)	STIPULATION AND ORDER TO
)	RESCIND THE TERMINATION OF
and)	KORANDO CORPORATION ON THE
)	BILE/PIGUA BRIDGE REPLACEMENT
Department of Public Works)	PROJECT (GU-NH-NBIS(007))
)	
<u>Purchasing Agency.</u>)	

The Department of Public Works, Government of Guam ("DPW") and Korando Corporation ("Korando"), by and through its respective undersigned counsel, hereby jointly submit this Stipulation and Order to Rescind the Termination of Korando Corporation on the Bile/Pigua Bridge Replacement Project (GU-NH-NBIS(007)) ("Project").

The parties stipulate as follows:

1. DPW rescinds the July 10, 2015 termination of Korando and Korando agrees to complete the Project in accordance with the parties' Bile/Bridge Replacement Contract dated June 10, 2014 ("Korando's Contract"), as revised by this Stipulation.
2. The Project will have a new target start date of January 25, 2016 ("New Start Date"). Korando will have the full 450 days in which to complete the Project (subject to any extension of time approved after the New Start Date) on the terms and conditions contained in Korando's Contract, as revised by this Stipulation.
3. All liquidated damages are hereby waived through the New Start Date.
4. DPW will immediately process Korando's Payment Applications for work performed through July 10, 2015 (the termination date):
 - a. The First Payment Application for the sum of \$195,367.36 (net after deducting retainage).
 - b. The Second Payment Application was submitted on July 10, 2015 for work performed through July 10, 2015, in the amount of \$122,248.43
5. Upon the signing of this Stipulation Korando can submit written Proposed Changed Orders in accordance with the terms and conditions of Korando's Contract. DPW agrees that it will review on the merits and process the Change Orders timely and in good faith, and in accordance with the terms of Korando's Contract. Korando's change orders will include, but are not limited to, the following:

a. Demobilization and remobilization costs, materials previously ordered or in store, which cannot be used on the Project due to the delay of the Project, and any other expenses related to the termination and delay of the Project.

b. Korando's Alternate Phasing Plan requires the construction of a new temporary steel bridge ("New Steel Bridge") due to its contention of the inadequacy of the existing temporary steel bridges. Korando will submit a change order for all costs associated with the New Steel Bridge as proposed in Submittal No. 562.001-02.

c. Korando contends that there is a conflict between the existing overhead power lines and the operation of the crane when hoisting and positioning the piles during the pile driving operation (the "Conflict"), as depicted in DPW's construction documents. If DPW/owner in coordination with Korando reasonably determines this is a design issue, DPW will be responsible for: (i) finding a constructible solution, redesigning and providing the new plans to address this conflict; and (ii) contacting GPA and third party communication providers.

6. DPW agrees that it will act in good faith to use TG Engineers as the Construction Manager on this Project. In no case will Stanley be used as the Construction Manager on this Project.

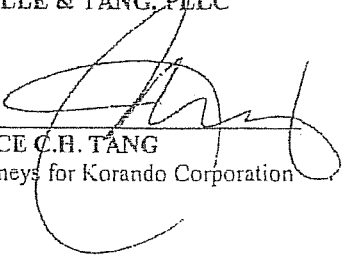
7. Korando agrees that it will act in good faith to retain Mr. Keith Farrell as a consultant on the Project.

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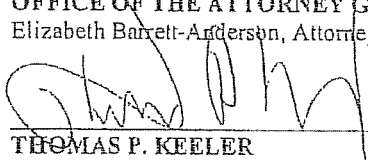
SO STIPULATED on this 16th day of December, 2015.

CIVILLE & TANG, PLLC


JOYCE C.H. TANG
Attorneys for Korando Corporation

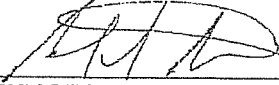
OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General

By:


THOMAS P. KEELER
Assistant Attorney General

DEPARTMENT OF PUBLIC WORKS

By:


GLENN LEON GUERRERO
Director, DPW


ORDER

Pursuant to the foregoing Stipulations made by the parties, it is hereby ORDERED that DPW's termination of Korando's Contract is hereby RESCINDED, and the terms of the above Stipulations are hereby incorporated into and made a part of this Order.

The Public Auditor's approval of this Stipulation and Order is a Final Administrative Decision. The parties are hereby informed of their right to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with Part D of Article 9 of 5 GCA §5481(a).

A copy of this Stipulation and Order shall be provided to the parties and their respective attorneys in accordance with 5 GCA §5702, and shall be made available for review on the OPA Website at www.opaguam.org.

SO ORDERED this 16th day of December, 2015.


DORIS FLORES BROOKS, CPA, CGFM
Public Auditor.

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Bile/Pigua Bridges Reconstruction

Tom Keeler

Sent: Friday, September 30, 2016 8:39 AM
To: joaquin.blaz [joaquin.blaz@dpw.guam.gov]

Confidential Attorney/Client Privileged Communication

Kin.

I see on the Agenda that Bile/Pigua is 44% time and 13% progress. The last meeting I was able to attend (3 weeks ago?) GTG was informed that the delay related to Korando's decision on how to drive piles, relocate GPA poles, etc. At that time I suggested that the delay issue be address. I recommend that a letter be prepared memorializing DPW's position as to the reason for the delays and what, if any, additional time would be allowed. This suggestion was based on the desire to address time delays and requests for time extensions at the time of delay, as opposed to at close out. I will remind PTG of the need for a letter however need you (assuming you think appropriate) to support such.

PLEASE do not forward this email to anyone other than the Director and Deputy Director. It is marked confidential and will be maintained separately from the procurement record.

Please see me if any questions. Thanks.

Tom

Saina Ma'ase,
Si Thomas P. Keeler
Assistant Attorney General
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590 South Marine Corps Dr.
Ste. 706, ITC Bldg.
Tamuning, Guam 96931
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DPW & Bile/Pigua Bridges Reconstruction - Disclaimer language

Tom Keeler

Sent: Monday, November 14, 2016 9:30 PM

To: Karl P. Espaldon

Karl,

I am forwarding on the below exchange of emails re Bile/Pigua's contractor request for bridge re various bridge projects. The request is related to contractor's desire to move a large heavy cra the project site. A concern exists as some of the reports were prepared by the military and incl specifications with disclaimers noting "unclassified for limited distribution only Pre-decisiona contractor made the request via letter, and not via a FOIA request, I've advised DPW that it doe classified material but that its letter should disclose such. I also suggested that the departme contractor's request. That is it for now. I don't think anything will happen while I am off isla provide this note to at least put you on notice of contractor's request.

Tom

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 Si Thomas P. Keeler
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From: Tom Keeler
 Sent: Monday, November 14, 2016 9:20 PM
 To: Kobayashi, Lynden; Wilson, Jeff; Yao, David; Lanning, Michael; Anderson, Buster
 Subject: RE: Disclaimer language

Lynden,

As the request was made via a letter I don't have a problem not providing contractor the load ra include the military vehicle specifications that contain the referenced disclaimers. As a matter I recommend that the response reference the military vehicle specifications and the reason why t provided.

As discussed earlier today, DPW's decision not to provide the military vehicle specifications ma in contractor submitting a FOIA request. Guam's Sunshine Act is very broad. The only possible ex of to disclosing the military vehicle specifications is 5 GCA Section 10108 (Limitations on Righ subsection (i)), which provides:

"All existing privileges or confidential records or other information expressly prot not be abrogated by this Act."

I mention this as DPW may want to notify the military of contractor's request and advise that DE the military vehicle specifications because of the disclaimers. If so, the department may want t any specific federal laws or regulations that bar the specifications being disclosed. This woulc when/if it needs to respond to a formal FOIA request. Finally, even if the military vehicle 'spec disclosed DPW may be required to provide a redacted report. As a reminder, any such communicac procurement record AND PROCUREMENT LOG.

In closing, I agree with you not to disclose the load rating calculations that include the milit specifications but recommend that such be disclosed to contractor. Further, it may be prudent to contractor's request and how the department will be responding.

Please contact me if any questions. Note that there may be a lag in responding as I will be off Thanks.

Tom

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DPW & Bile/Pigua Bridges Reconstruction Project - Cruz Condemnation

Tom Keeler

Sent: Saturday, December 17, 2016 7:51 AM

To: Kathy Fokas

Confidential Attorney/Client Privileged Communication

Kat,

Mike Lanning of Parsons is the gent we want to meet with to discuss the Cruz condemnation. Mike advises that he will be off-island starting Dec. 23 through Jan. 9. If possible, we should try to meet this Thursday. If not, can we hold off until Monday, January 9th? Please advise.

Tom

Saina Ma'ase,
 Si Thomas P. Keeler
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FW: Malesso Condemnation Case (Pigua) easement

Tom Keeler

Sent: Wednesday, January 03, 2018 3:22 PM
To: joaquin.blaz [joaquin.blaz@dpw.guam.gov]

PRIVATE AND CONFIDENTIAL

Kin,

Please see Dave Highsmith's below email. Based on my involvement I think someone from DCA may be the best person to testify as to why the land was taken and where it is. Anyone from DPW or Parsons would have relied on DCA, right?

Tom

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From: David Highsmith
Sent: Wednesday, January 03, 2018 2:29 PM
To: Tom Keeler
Subject: Malesso Condemnation Case (Pigua) easement

Can you advise me as to which DPW employee would be the best to call as a witness on this case? I may need someone to explain why the land was taken and where it is. Very simple. Thanks.

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FW: Merizo Condemnation

Tom Keeler

Sent: Wednesday, January 11, 2017 4:55 PM

To: joaquin.blaz [joaquin.blaz@dpw.guam.gov]

Confidential Attorney/Client Privileged Communication

Kin,

Am forwarding on the below email fyi.

Also, fyi it appears that the taking is being reduced by 108 square meters, or by 45% of the 240 square meters claimed in the original petition.

Please contact me if any questions. Thanks.

Saina Ma'ase,
 Si Thomas P. Keeler
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From: Kathy Fokas
 Sent: Wednesday, January 11, 2017 3:12 PM
 To: Ken Orcutt
 Cc: Tom Keeler
 Subject: Merizo Condemnation

Hi Ken,

This case involves a partial taking to widen the Pigua Bridge in Merizo. The property owners filed a counterclaim alleging the taking is greater than the area stated in our complaint. Today, I met with Tom Keeler, the head of Parsons, DPW's Fed Highways person, DLM surveyors, and Kristan Finney. There was a mistake made in the plan prepared by Parsons' surveyor. We explained the mistake at the meeting and DPW will authorize Parsons to have its surveyor correct the plan. It is expected to take a few weeks to