RECEIVED OFFICE OF PUBLIC ACCOUNTABILITY PROCUREMENT APPEALS 1 FISHER & ASSOCIATES 6/26/2013 Thomas J. Fisher, Esq. TIME: 3:47 DAM DPM BY: M.B. Suite 101 De La Corte Building 167 East Marine Corps Drive FILE NO OPA-PA: -13 - 004 3 Hagåtña, Guam 96910 Telephone: (671) 472-1131 Facsimile: (671) 472-2886 4 BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY 5 HAGÅTÑA, GUAM 6 IN THE APPEAL OF K CLEANING OPA-PA-13-004 7 **SERVICES** 8 **AGENCY OPPOSITION TO** APPELLANT A MOTION TO STRIKE 9 10 11 12 **COMES NOW** the Guam International Airport Authority, by and through Counsel 13 Fisher & Associates, and Opposes Appellant K Cleaning Service's Motion to Strike a Reply to 14 Appellant's Comments filed 13 June 2013. 15 STATEMENT OF FACT 16 On 13 June 2013 Appellant filed a Motion to Strike the Agency's Reply to Appellant's 17 Comments on an Agency Report. By the Motion, Appellant asks the Office of Public 18 Accountability (OPA) to order the Agency to supply him with a portion of the Agency Record 19 not otherwise provided, strike an Agency Reply or alternatively, allow him to comment (a sur-20 comment) on the Reply. 21 Guam International Airport Authority has no objection to this Office receiving an 22 additional Comment from Appellant. The Record speaks for itself and no number of separate 23 comments can serve to alter the facts. Appellant received the same solicitation as other 24 prospective offerors and was present at the pre-bid conference when Mr. Taitano instructed the

attendees of the proper place for submission of bids. In his sur-comments he may state that he

25

didn't hear Mr. Taitano. Perhaps he didn't; but that is no fault of the Airport.

Appellant claims that he was not provided a portion of the procurement record. That is not precisely true. The Procurement Record filed in this matter specifically informed all, including Appellant, that the tape was available at the Office of Public Accountability (OPA). Had the Agency the capability of reproducing the tape, it would have. It didn't have the capability, so it made that portion of the record available to all at the OPA<sup>1</sup>. Appellant's counsel is candid when he states he was aware of the existence of the tape recording and that it was in the possession of the Office of Public Accountability. He is equally candid when he admits he did not listen to the tape made available to him (and the Agency) at the Office. But he argues that had he known what was on the tape, he might have listened to it. That may be, but his failure to do so was no fault of the Airport.

Appellant argues that the Agency ought not to be allowed to rely on a portion of the Record he was unaware of. In his Comments though, he states "[a]t the time and place the bids were to be submitted and opened, K CLEANING did not believe there was any ambiguity and that the process was to take place at the conference room." *See Appellant's Comments at p. 2*. There is no reason the Agency should not be allowed to rely on evidence to the contrary, nor should Appellant be surprised when it does.

//

Appellant states he was required to receive a copy of the Procurement Record. This is not the law. See 2 Guam Admin. R. & Reg. §12104(c)(3). The law requires he receive a copy of the Agency Report, not the Procurement Record.

To reiterate; the Agency does not object to further comments, nor, if Appellant has the ability, that he take the tape from the OPA and copy it. Otherwise he might consider visiting the OPA and listening to the tape. There is no basis however for striking an Agency Reply.

Thomas J. Fisher Attorney for GIAA