

**LAW OFFICES  
CUNLIFFE & COOK**  
Suite 200, 210 Archbishop Flores Street  
Hagåtña, GU 96910  
Telephone: (671) 472-1824  
Telecopier: (671) 472-2422

Attorneys for: Appellant

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO OPA-PA: 13-004

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
HAGATNA, GUAM**

IN THE MATTER OF	)	OPA-PA-13-004
	)	
	)	<b>MOTION TO STRIKE AGENCY REPLY</b>
	)	<b>TO APPELLANT'S COMMENTS OR IN</b>
	)	<b>THE ALTERNATIVE ORDER AGENCY</b>
<b>K CLEANING SERVICES,</b>	)	<b>TO PROVIDE COMPLETE RECORD TO</b>
	)	<b>APPELLANT , ALLOW APPELLANT</b>
	)	<b>TO FILE SUPPLEMENTAL COMMENTS</b>
	)	<b>TO THE AGENCY'S REPLY, AND</b>
Appellant.	)	<b>EXTEND TIME FOR FILING TRIAL</b>
	)	<b>BRIEF AND ADVISING IF WANT</b>
	)	<b>HEARING</b>
_____	)	

On June 10, 2013, Guam International Airport Authority ("GIAA") filed its Agency Reply to Appellant's Comments. In that Reply GIAA cited to a portion of the Procurement Record not provided to Appellant K Cleaning Services ("Appellant"). The portion of the record cited and not provided was a tape recording of the mandatory pre-bid conference on February 7, 2013. Although this information was clearly available to GIAA when it filed its Agency Report on May 23, 2013, there is no mention of the alleged statements from this recording in the Agency Statement filed as part of the Agency Report.

**ORIGINAL**

Guam Procurement law requires that the Appellant receive a copy of the record regarding the matter on appeal. 2 GAR §12104(c)(3). Appellant has neither received a copy of the tape recording delivered to the Office of Public Accountability (“OPA”) or a transcript of its contents. Appellant had no reason to believe there was important information pertaining to its appeal based on the Agency Report. It is only now that certain information from that pre-bid conference is quoted in the Agency’s Reply that Appellant is aware Agency is relying on a portion of the record that has not been provided to it.

As noted in Declaration of Counsel filed herewith, Appellant was aware of the tape recording when it received the Agency Procurement Record on May 15, 2013. Appellant’s counsel sent a letter to Agency’s counsel asking for a copy of those recordings. Shortly thereafter Appellant’s counsel and the Agency’s counsel had a telephone conversation in which Agency’s counsel advised that they did not have the capability for making copies of the tapes and asking if Appellant had that capability. Upon receipt of the Agency’s Report including the Agency’s Statement on May 23, 2013, and there being no reference to any information that maybe on the tape recording (and of import to this appeal), Appellant did not pursue the issue of obtaining a copy of the recording. It was only with the filing of the Agency Reply to Appellant’s Comments where for the first time Agency cited to information contained in the tape recordings that Appellant became aware that there may be information pertinent to the appeal in that portion of the record.

Appellant requests that the OPA strike the Agency Reply at least as to any reference to a portion of the procurement record that has not been provided Appellant.

In the alternative Appellant requests the OPA order the Agency to provide a copy of the tape recording as part of the procurement record to Appellant and provide Appellant an opportunity to file a Supplemental Comment to the Agency Report based on the newly discussed information included in the Agency Reply to Appellant's initial comments.

Finally, Appellant requests that the Scheduling Order be modified to allow Appellant additional time to file its Trial Brief and advise the OPA if it wants a hearing (which is now due June 14, 2013), until it has an opportunity to review the entire record including the tape recording once it is delivered to Appellant's counsel.


Appellant hopes the OPA would agree that it is a concern that the Agency had information that it deemed important enough to include in its reply to Appellant's opposition to the Agency Report at the time Appellant's Agency Report was filed, and yet failed to include that information in the Agency Report. The Agency clearly should have the capability of making copies of recordings of its meetings particularly for purpose such as appeals to the OPA, as they are a required part of the record. 5 GCA §5249(c).

For all the reasons stated herein, Appellant requests that the Agency's Reply be stricken as to anything citing to portions of the record that have not been provided to Appellant. In the alternative Appellant requests an opportunity to respond to the Agency Reply regarding this information once Agency provides a copy of the recording pursuant to an order Appellant asks the OPA to make requiring Agency to provide the recording to Appellant. Finally, Appellant requests that the OPA continue the filing dates set forth in scheduling order for filing its trial brief to five (5) business days after Agency delivers

the recording to Appellant, and that Appellant have until the extended date to advise if it desires a hearing on this appeal.

Respectfully submitted this 13<sup>th</sup> day of June, 2013.

**CUNLIFFE & COOK**  
A Professional Corporation  
Attorneys for Appellant

By  \_\_\_\_\_  
JEFFREY A. COOK, ESQ.