



Jerrick Hernandez <jhernandez@guamopa.com>

GPA's Filing of Motion to Quash Subpoena (OPA-PA-21-012)

Marianne Woloschuk <mwołoschuk@gpagwa.com>

Thu, Jun 5, 2025 at 4:34 PM

To: "Accountability Auditor Jerrick Hernandez (OPA)" <jhernandez@guamopa.com>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "roxana.w@infosend.com" <roxana.w@infosend.com>, "Brenda P. Aguon" <bpaguon@gpagwa.com>

Håfa Adai, Mr. Hernandez!

Submitted through electronic filing is the following:

1. GPA's Motion to Quash Subpoena (on remand from Case No. CV0207-22) (total of 10 pages)

Would you please be so kind as to acknowledge receipt of this email and attachment?

Thank you

-Marianne

Marianne Woloschuk

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 [GPA's Motion to Quash Subpoena.pdf](#)
1176K

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Counsel for the Guam Power Authority

OFFICE OF THE PUBLIC AUDITOR **PROCUREMENT APPEALS**

IN THE APPEAL OF)	APPEAL NO. OPA-PA-21-012
)	
Graphic Center, Inc.,)	
)	GPA'S MOTION TO QUASH SUBPOENA
Appellant.)	
)	

I. Introduction

Appellant Graphic Center, Inc., requested a subpoena for Jamie Pangelinan, the Guam Power Authority's (GPA) Supply Management Administrator, to testify at the evidentiary hearing scheduled for 9:00 a.m. on June 6, 2025. The Public Auditor issued the subpoena to Ms. Pangelinan and undersigned counsel accepted service on her behalf. GPA now moves to quash the subpoena for the reasons set forth below.¹

II. Factual and Procedural Background

Graphic Center appealed the denial of its protest to the OPA, arguing, *inter alia*, that GPA had improperly accepted InfoSend's incomplete bid proposal which was allegedly missing a required document. The Public Auditor held a hearing on the merits and ruled that Graphic

¹ Ms. Pangelinan will appear at the hearing, pending the Public Auditor's decision on the motion to quash.

Center's claim was untimely and the OPA therefore lacked jurisdiction. Graphic Center received documents from GPA through a Sunshine Act (FOIA) request and then sought judicial review in the Superior Court.

At the judicial review level, Graphic Center's argument that InfoSend had submitted an incomplete proposal expanded into a claim that GPA had granted InfoSend an exemption from having to submit the allegedly missing document, thereby giving InfoSend preferential treatment that was not accorded to another bidder, Moonlight BPO, which was disqualified for failing to submit a different required document. In its complaint, Graphic Center alleged that Ms. Dawn Fejeren, GPA's buyer for the procurement, testified at the OPA merits hearing that GPA gave InfoSend an exemption.

The court ordered the parties to brief the issues. Instead of ordering a transcript of Ms. Fejeren's testimony or citing to the relevant moment in the audio recording of the OPA merits hearing, Graphic Center's brief relied on the allegation in its own complaint as evidence of an exemption for InfoSend.

The court ruled that the Public Auditor properly found untimely Graphic Center's claim that InfoSend submitted an incomplete proposal:

[T]he OPA correctly asserted that because Graphic Center had not brought up the issue of missing documentation on Infosend's part in a formal written protest to GPA, OPA could not hear the appeal on this issue. . . . Even if Graphic Center was not aware of the information missing from Infosend's application at the time of its original protest, it should have filed an additional written protest with GPA within 14 days of becoming aware, rather than including the issue only in its appeal to OPA. Because the OPA's determination on this legal issue was not contrary to law, this decision is affirmed.

Graphic Center, Inc. v. Guam Power Authority, Super. Ct. Court Case No. CV0207-22, Decision & Order at 4 (Oct. 29, 2024).

However, as to Graphic Center’s claim that the procurement record was incomplete because GPA gave InfoSend an exemption that did not appear in the record, the court stated:

Through Graphic Center’s Freedom of Information Act (FOIA) request, it is clear that Infosend did not include all of the required information in their initial response to the RFP. *Graphic Center has argued that there is evidence from a GPA employee² that Infosend was granted an exemption by GPA which prevented its disqualification. . . . [T]he procurement record contains no explanation as to why Infosend’s offer was allowed to continue while missing key documents, but Moonlight’s offer was rejected for that reason.*

Graphic Center, Case No. CV0207-22, D&O at 6 (emphasis added). On this basis, the court remanded the matter to the OPA “for further agency investigation and record development to determine the materiality of the information missing from the procurement record.” *Id.* at 7.

On remand before the OPA, GPA filed a motion in limine on May 8, 2025, to ensure that Graphic Center would adhere to the court’s remit and not be permitted to reopen the evidence to introduce additional irrelevant testimony of witnesses who did not appear at the merits hearing in February 2022. Graphic Center filed an opposition on May 13, 2025. The Public Auditor held a hearing on May 16, 2025, following which it seemed to rule in favor of GPA and held that only the witnesses called at the previous hearing could be called at the upcoming hearing.

Immediately after the hearing, GPA contacted Graphic Center and asked which GPA witnesses Graphic Center wanted available for the hearing. Ex. A (email thread, message of May 16, 2025, 2:04 p.m.). Graphic Center replied that it wanted a GRCP 30(b)(6) witness “knowledgeable about the procurement decision to award to infosend and with knowledge of the procurement record.” Ex. A (email thread, message of May 19, 2025, 4:26 p.m.). GPA responded

² This is a reference to Ms. Fejeran. *See* Compl. ¶ 47 (“Ms. Fejeran testified that GPA granted InfoSend an exemption from submitting the Amendment [Exhibit A inclusion] which prevented disqualification.”) (Apr. 5, 2022).

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that only prior witnesses could be called, provided a list of the witnesses, and offered to make GPA's witnesses available. Ex. A (email thread, message of May 20, 2025, 6:41 p.m.). Graphic Center next communicated with GPA some two weeks later, by copying GPA on Graphic Center's message to the OPA, requesting a subpoena for Ms. Pangelinan “[a]s Ms. Pangelinan is chief buyer here, [and] our position is that her testimony is essential on the procurement record”. Ex. B (email message of June 3, 2025, 3:24 p.m.).

The Public Auditor issued the subpoena the following day. This motion to quash follows.

### **III. Argument**

#### **A. The Public Auditor should quash the subpoena because it is unreasonable and oppressive for imposing an undue burden on the witness and not allowing sufficient time to comply.**

Although the Guam Rules of Civil Procedure do not necessarily apply in proceedings before this tribunal, they can nevertheless be instructive. Rule 45 governs subpoenas and directs the courts to quash or modify a subpoena that subjects a person to undue burden or fails to allow a reasonable time to comply. Guam R. Civ. P.45(c)(3)(A)(i) & (iii). The rule allows courts to quash a subpoena if compliance would be unreasonable or oppressive. The subpoena in this case is both unreasonable and oppressive and should therefore be quashed.

First, Graphic Center gave GPA almost no notice of the subpoena. Graphic Center did not communicate with GPA about the issue for two weeks, leading GPA to think it had been put to rest, particularly in light of the Public Auditor's ruling that Graphic Center was not entitled to call new witnesses. GPA learned of Graphic Center's efforts to obtain a subpoena for Ms. Pangelinan only yesterday. The lack of notice makes Graphic Center's subpoena unreasonable.

Second, Ms. Pangelinan supervises the busy procurement division at GPA. She was not personally involved in the procurement at issue here and will have no or next to no relevant

testimony to give. Taking her away from her work for no good reason imposes an undue burden on GPA. This makes Graphic Center's subpoena oppressive.

Both parties included Ms. Pangelinan on their witnesses lists for the merits hearing in February 2022. *See Record OPA-PR-0832 (Appellant's Witness List) & OPA-PR-1319 (Appellee's Witness List).* Yet neither party called Ms. Pangelinan to testify, in recognition that her testimony would not advance the proceedings. Ms. Pangelinan is not the buyer for this RFP, Ms. Fejeran is, and both parties took the opportunity to question Ms. Fejeran on the stand. The subpoena to Ms. Pangelinan is both unreasonable and oppressive and should be quashed.

**B. If the motion is not quashed, the testimony of this witness, like the testimony of all the other witnesses, must be strictly limited to the issue on remand, i.e., the missing exemption.**

The court agreed with the Public Auditor that Graphic Center's claim as to InfoSend's incomplete proposal was untimely. This should have ended the matter. However, Graphic Center also argued that InfoSend had received an exemption from GPA; for some reason the Superior Court chose to believe this argument, despite the fact that Graphic Center did not provide any evidence of the alleged exemption other than its own representations.

GPA has provided the Public Auditor and Graphic Center with professional transcripts of the other witnesses at the merits hearing prepared by the same court reporter who prepared the partial transcripts for the Superior Court proceedings. Review of the transcripts shows that there is no testimony of GPA witnesses to support the existence of an exemption.

The court believed there to be evidence that GPA had granted Infosend an exemption from Exhibit A that prevented InfoSend from being disqualified. The court also believed that GPA permitted InfoSend to continue its bid without a key document whilst rejecting Moonlight for the

same reason. The court would not have remanded this matter had it known that the alleged exemption does not exist and is therefore not missing from the procurement record.

If the Public Auditor denies GPA's motion and Ms. Pangelinan must testify, her testimony, like that of all the other witnesses, must be limited to the issue of the alleged exemption purportedly missing from the procurement record, because this is the basis for the Superior Court's remand.

#### **IV. Conclusion**

In light of the foregoing, the Public Auditor should grant GPA's motion and quash the unreasonable and oppressive subpoena issued to Ms. Pangelinan. In the alternative, if Ms. Pangelinan must testify, her testimony, like that of the other witnesses, must be strictly limited to the issue of the exemption supposedly granted by GPA to InfoSend to allow their bid to continue.

Respectfully submitted this 5th day of June, 2025.

*Attorney for Guam Power Authority*



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**Marianne Woloschuk**  
GPA Legal Counsel

# Re: graphic center, opa-pa-21-012 hearing witnesses for 06/06/25

Marianne Woloschuk

Tue 5/20/2025 6:41 PM

To:Joshua D. Walsh <jdwalsh@rwtguam.com>;

Hi, Josh!

These are the witnesses who testified at the HOM on 02/04/22:

Called by Graphic Center:

1. Jesse Rosario, Graphic Center
2. Chris Biolchino, Graphic Center
3. James Borja, GPA [testimony transcribed]
4. John Kim, GPA [testimony transcribed]
5. Dawn Fejeren, GPA

Called by GPA:

6. Kelly Law, InfoSend
7. Matthew Schmidt, InfoSend

Called by Graphic Center on rebuttal:

1. Jesse Rosario
2. Chris Biolchino

These are the only witnesses that can be called. James and John were on the evaluation committee. Dawn is a buyer in Procurement. Please let me know if you wish to call any of GPA's witnesses so I can make arrangements.

Thanks,

-Marianne

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**From:** Joshua D. Walsh <jdwalsh@rwtguam.com>

**Sent:** Monday, May 19, 2025 4:26 PM

**To:** Marianne Woloschuk

**Subject:** Re: graphic center, opa-pa-21-012 hearing witnesses for 06/06/25

**CAUTION: This email came from an external source. Please do not click on links or open attachments from senders you do not trust.**

Hi Marianne,

Thanks for reaching out. I just wanted to have a FRCP 30(b)(6) GPA rep (the contracting officer?) knowledgeable about the procurement decision to award to infosend and with knowledge of the procurement record. Do you want to suggest someone or two? If you give it a few days I can suggest some names if you prefer.

Best,

**Ex. A Page 1 of 2**

Josh  
**RAZZANO WALSH & TORRES, P.C.**  
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On Fri, May 16, 2025 at 2:04 PM Marianne Woloschuk <[mwołoschuk@gpagwa.com](mailto:mwołoschuk@gpagwa.com)> wrote:

Hi, Josh! When you get a chance can you please let me know which witnesses Graphic Center needs for the hearing? I'll check that they're here for the hearing. Thanks, -Marianne

Marianne Woloschuk  
Legal Counsel  
Guam Power Authority  
Gloria B. Nelson Public Service Building  
688 Route 15 Mangilao Guam 96913  
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# Fwd: In the Appeal of Graphic Center, Inc.; OPA-PA-21-012

[Joshua D. Walsh <jdwalsh@rwtguam.com>](mailto:Joshua.D.Walsh@rwtguam.com)

Tue 6/3/2025 3:24 PM

To:Jerrick Hernandez <jhernandez@guamopa.com>;

Cc:Marianne Woloschuk <mwoloschuk@gpagwa.com>; Sosanbra Salas <ssalas@rwtguam.com>;

0 2 attachments (68 KB)

6.3.25 Appellant's Witness List.pdf; 6.3.25 Appellant's Exhibit List.pdf;

**CAUTION: This email came from an external source. Please do not click on links or open attachments from senders you do not trust.**

Hello Mr. Hernandez,

I have submitted a witness list in order to keep the OPA updated on my plans for Friday's presentation. I want to be clear that GPA counsel (who is ccd here), is accommodating on most of the GPA witnesses, but has raised an objection as to whether or not Ms. Pangelinan will be allowed to testify. As Ms. Pangelinan is chief buyer here, our position is that her testimony is essential on the procurement record, since we do not want to burden the certifying officer for the record who was Mr. Benevente. I understand from my communications with counsel that GPA is of the position that no new witnesses can be called in this matter, so they object to her offering testimony.

I request that a subpoena be prepared for Ms. Pangelinan for testimony on Friday. If the OPA agrees with GPA counsel and decides not to allow me the subpoena or the testimony, I respectfully ask that this communication be included in our administrative record.

Sincerely,

Josh

**RAZZANO WALSH & TORRES, P.C.**

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From: [Sosanbra Salas <ssalas@rwtguam.com>](mailto:Sosanbra.Salas@rwtguam.com)

Date: Tue, Jun 3, 2025 at 3:11 PM

Subject: In the Appeal of Graphic Center, Inc.; OPA-PA-21-012

To: [Jerrick Hernandez <jhernandez@guamopa.com>](mailto:Jerrick.Hernandez@guamopa.com)

Cc: [Joshua D. Walsh <jdwalsh@rwtguam.com>](mailto:Joshua.D.Walsh@rwtguam.com)

Dear Mr. Hernandez:

Please see the attached (2) two documents to be filed in the above-referenced matter. Should you have any questions or concerns, please feel free to contact our office. Thank you.

--

Regards,  
**Sosanbra Salas Reyes**

**RAZZANO WALSH & TORRES, P.C.**

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