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See Attached - E-FILE and E-SERVE - Data Management Resources, LLC and Office of the Governor - OPA-PA-22-004

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Tue, Jun 21, 2022 at 3:31 PM

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The Office of the Attorney General E-files to the Office of Public Accountability and E-Serve to the Law Office of Jacqueline T. Terlaje. Please acknowledge receipt of email and the documents listed below.

- Agency Statement
- Agency Report w/ Declaration Regarding Court Action

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2 attachments **06-21-22 OPA-PA-22-004 AStmt.pdf**
683K **06-21-22 OPA-PA-22-004 AR (2).pdf**
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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

IN THE APPEAL OF:)	DOCKET NO. OPA-PA-22-004
)	
DATA MANAGEMENT RESOURCES,)	
LLC,)	
)	
Appellant,)	AGENCY STATEMENT
)	
and)	
)	
OFFICE OF THE GOVERNOR OF GUAM,)	
)	
Purchasing Agency.)	
)	

The Office of the Governor of Guam (“GOV”), by and through the Office of the Attorney General, hereby submits its Agency Statement, pursuant to 2 GAR Div. 4 § 12105(g), in response to the appeal from Data Management Resources, LLC (“DMR” or “Appellant”) of RFP-Office of the Governor of Guam-2022-001, re: Procurement of Professional Services for the government of

Guam Licensing and Permitting System.

I. RELEVANT BACKGROUND

On February 7, 2022, GOV issued RFP-Office of the Governor of Guam-2022-001, re: Procurement of Professional Services for the government of Guam Licensing and Permitting System (“RFP”). On February 25, 2022, Appellant submitted questions to GOV via e-mail. On March 5, 2022, GOV issued all questions and answers submitted to all registered potential Offerors. On March 19, Appellant sent an email to Matthew Santos, the RFP’s designated Single Point of Contact for vendor communications, in protest of the RFP (Letter of Protest #1”). On April 8, 2022, Appellant sent another email to Matthew Santos, the RFP’s designated Single Point of Contact for vendor communications, in protest of the RFP on other grounds (“Letter of Protest #2”). GOV took no further action in the RFP except to suspend all actions until GOV issued its denial of both Appellant’s protests on May 24, 2022. After issuing the decisions on the Letters of Protest, GOV made a written determination in the procurement record to proceed with the procurement pursuant to 5 GCA § 5425(g)(1) and 2 GAR, Div. 4 § 9101(e)(1), and sent notice of this determination to Appellant on May 24, 2022. Appellant did not file a protest of this determination with the Public Auditor within two (2) days, as required by 5 GCA § 5425(g)(1) and 2 GAR, Div. 4 § 9101(e)(1). On May 27, 2022, after waiting the required two (2) days, GOV proceeded with the procurement, and issued Amendment No. 3 to set a new proposal submission deadline of June 10, 2022 for the RFP. On June 9, 2022, GOV received the notice of receipt of appeal from the Office of Public Auditor (“OPA”). On June 10, 2022, GOV received proposal submission(s). The following is GOV’s Agency Statement in response to Appellant’s appeal.

II. RESPONSES TO ALLEGATIONS

Appellant makes allegations that seem to begin at Notice of Appeal, June 8, 2022, Part IV(a), Paragraph 7, but are interspersed with factual statements that appear to require no response from GOV. This statement will attempt to respond to all material allegations presented using bold font, beginning at this paragraph and following sequentially with the appeal document, as much as possible, but renumbered here for the purposes of this statement.

- 1) Allegation--- No stay of procurement was issued by [GOV], pursuant to Guam law; rather a "suspension" was issued via email to DMR on March 21, 2022: **GOV made no award of the contract and took no further action in the procurement after Letter of Protest #1 was filed on March 19, 2022 and prior to the resolution of both Letters of Protest on May 24, 2022, pursuant to 5 GCA § 5425(g) and 2 GAR, Div. 4 § 9101(e). Appellant has failed to allege how it is materially affected or prejudiced by these allegations.**
- 2) Allegation---5 G.C.A § 5425(a) requires protests to be made within fourteen (14) days of the issues leading to the protest being known. On March 5, 2022, DMR received responses to its questions submitted on February 25, 2022. DMR lodged its protest on March 19, 2022 within the fourteen days of the grounds for the protest. Therefore, DMR's protest to the OOG is within the time required by 5 G.C.A §5425(a): **The RFP was published on February 7, 2022, containing its Scope of Services and all alleged defective or "arbitrary" terms to which DMR objects. DMR registered for, and was sent a copy of the RFP on February 7, 2022 at 9:19 a.m. ChST. February 7, 2022 is the date that DMR was on notice that the RFP included these allegedly defective terms. These terms have not changed, and were not changed by the Questions or Answers issued on March 5, 2022. As such, the Letter of Protest was submitted beyond the 14-day time period of when DMR first knew or should**

have known of the facts giving rise to its complaints. 5 GCA § 5425(a) and 2 GAR, Div. 4 § 9101(c)(1); *see also In the Appeal of ASC Trust Corporation, OPA-PA-09-010 (finding that the fourteen-day clock begins when a party first becomes aware of facts giving rise to the protest).*

- 3) Allegation---On March 28, 2022, DMR became aware of the failure of [GOV] to comply with 5 G.C.A. § 5141(b). Specifically, Government of Guam employee Matthew Santos is the identified as the Single Point of Contact for the RFP. See RFP-2022-001, p. 5 Section E; p 7, Section H Matthew Santos is also identified as the Author for RFP-2022-001. See RFP-2022-001, p. 5 Section 0: **GOV has substantially and materially complied with 5 GCA § 5141(b). The Procurement Officer who is responsible for the RFP, and is the authorized official and signatory for the issuance of the RFP, has attended all required trainings. Appellant has failed to allege how it is materially affected or prejudiced by these allegations.**
- 4) Allegation---Upon information and belief, Matthew Santos is also the author of the Responses provided by [GOV] on the questions submitted by vendors dated March 5, 2022, and the subject of the Protest dated March 9, 2022: **Matthew Santos assisted in the preparation of answers in accordance with 5 GCA § 5150. Appellant has failed to allege how it is materially affected or prejudiced by these allegations.**
- 5) Allegation--- On March 28, 2022, the Guam Community College Procurement Program, dated March 28, 2022, confirmed that there exists no record of the completion of procurement training of Government of Guam employee, Matthew C. Santos. **Appellant has failed to allege how it is materially affected or prejudiced by these allegations.**
- 6) Allegation--- 16. Upon information and belief, Venido Torres is not the Chief Procurement Officer, Director of Public Works, nor the head of the Office of the Governor: **Venido Torres**

is the Procurement Officer authorized and designated by the head of the agency of GOV pursuant to 5 GCA § 5121(c). Appellant has failed to allege how it is materially affected or prejudiced by these allegations.

- 7) Allegation---The document entitled "Notice of Determination on Procurement" fails to comply with 5 G.C.A. §5425(g)(1), and any action taken in contravention of the automatic stay required by Guam law is void: **The written determination to proceed with the procurement (RFP) and the required notice thereof comply with 5 GCA § 5425(g) and 2 GAR, Div. 4 § 9101(e). Appellant has failed to allege how it is materially affected or prejudiced by these allegations.**
- 8) Allegation---Appellant submits additional evidence of the non-compliance of OOG with Guam Procurement Law: 5 G.C.A § 5249 requires the OOG to maintain a complete procurement record: **GOV has maintained a complete procurement record of the RFP. Appellant has failed to allege how it is materially affected or prejudiced by these allegations.**
- 9) Allegation---Appellant submits additional evidence of the non-compliance of OOG with Guam Procurement Law: 5 G.C.A § 5220 requires the OOG to publish RFP documents, announcements and notices on its website. Notwithstanding the protests herein, no notice of any automatic stay is identified on the website. No notice of any lift of stay is identified on the website. No other information than in the aforementioned paragraphs are posted: **Appellant has filed no underlying protest on this basis to the GOV, and therefore there is no jurisdiction for the OPA to address this allegation. In addition, 5 GCA § 5220 only requires that "Invitations for Bid (IFBs) and Requests for Proposals (RFPs) shall be posted on the procuring agency's website. IFBs and RFPs procured through the General Services Agency (GSA) or the Department of Public Works (DPW) shall be posted, on the**

date of the IFB/RFP announcement,” and the procuring agency “shall provide notice in each IFB/RFP announcement that recommends that prospective bidders/respondents register contact information with the agency to ensure that they receive any notices regarding any changes or updates to the IFB/RFP.” 5 GCA § 5220(a) and (b). This statute requires that prospective offerors must register in order to receive important notices concerning an RFP. There is no requirement to publish such other notices on a website. GOV complied with 5 GCA § 5425(g) and 2 GAR, Div. 4 § 9101(e), and made no award of the contract and took no further action in the procurement after Letter of Protest #1 was filed on March 19, 2022 and prior to the resolution of both Letters of Protest on May 24, 2022. This is documented in the procurement record. Appellant has failed to allege how it is materially affected or prejudiced by these allegations.

III. APPELLANT’S UNSUPPORTED REQUEST FOR AN ORDER RE:

IDENTIFICATION OF FUNDING

Appellant requests “an order sustaining the Protest and directing the [GOV] to comply with good faith requirement for entry into a contract only for the term permitted by allotted funding subject to 5 G.C.A § 22401(a)(1), (2) and (3), and a factual finding that entry into a multi-year contract without any reasonable and significant identification of funding is an unreasonable condition imposed by the RFP in contravention of applicable federal law.” Notice of Appeal, June 8, 2022, Part IV(d), Paragraph 5. GOV has clearly identified the source of its funding in the RFP as Department of Interior Grant Award No. D20AP00048.

Guam Procurement Law applies to every expenditure of public funds irrespective of their source, including federal assistance funds. *See* 5 GCA §5004(b). However, if there is a conflict between the federal requirements and the Guam requirements, federal law is applied. 5 GCA §

5501.

Appellant fails to provide any underlying allegations in its appeal regarding the funding source, amount, or contract term. Appellant asks for relief regarding funding, but fails to provide any information or law that would entitle it to relief and has failed to provide any citation that conflicts with 5 GCA § 5237(a), local or federal. Guam Procurement Law clearly requires contracts to be cancelled if there is no continued or available funding. There is no obligation of the government to maintain funds available for the term of the contract. 5 GCA § 5237(a). It is improper for the government to obligate funds in excess or in advance of appropriation. 5 GCA § 22401. *See* 5 GCA § 5237. Appellant has failed to reference or provide any evidence or laws that state otherwise. For these reasons, this appeal should be denied and dismissed in its entirety.

IV. APPELLANT IS NOT AGGRIEVED AND NOT ENTITLED TO RELIEF

The RFP only imposes the requirements of Guam's Procurement Law, Guam's Procurement Rules and Regulations, Title 2 CFR, Part 200, and other applicable federal regulations. Therefore, its terms are not unreasonable, arbitrary, or capricious. Appellant fails to provide any legal authority to support its positions or evidence of any violation of law materially affecting its ability to participate in the procurement process. DMR is not aggrieved pursuant to 5 GCA § 5425(a) or 2 GAR, Div. 4 § 9101(a)(1)(a).

In order to pursue a protest, DMR must have standing. When standing is at issue, "the relevant inquiry is whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision." *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976). Under 5 GCA § 5245(a): "[a]ny actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection,

solicitation or award of a contract, may protest to ... the head of the purchasing agency." DMR must show that it is "aggrieved" by the alleged violations of law. 5 GCA § 5425(a).

DMR has not requested appropriate redress or remedy for its allegation. 2 GAR, Div. 4 § 9105 and 5 GCA § 5451. "If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be: (a) cancelled; or (b) revised to comply with the law." 5 GCA § 5451. DMR does not request revision of the RFP, nor does it request cancellation of the RFP. GOV has complied with the law, and even if the appeal were to be sustained, there is no request for a remedy that would be redressed by a favorable decision.

None of the complaints raised operate to penalize DMR or prevent DMR from participating in a federally funded Request for Proposals solicitation. DMR has suffered no injury, and is not aggrieved by the alleged violations. This appeal should be denied in its entirety and dismissed.

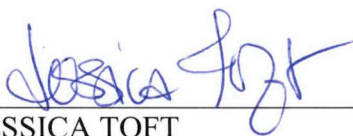
V. CONCLUSION

In conclusion and for the aforementioned reasons, GOV respectfully requests that this appeal be denied in its entirety and dismissed with prejudice.

Submitted this 21st day of June, 2022.

OFFICE OF THE ATTORNEY GENERAL
Leevin Taitano Camacho, Attorney General

By:



JESSICA TOFT
Assistant Attorney General