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OPA-PA-22-004 Appellant's Motion for Review of Determination

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Fri, Jun 24, 2022 at 6:52 PM

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Senseramente,

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Attorney for *Appellant*

**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF) APPEAL NO. OPA-PA-22-004
)
)
DATA MANAGEMENT RESOURCES,)
LLC.)
Appellant.)

**APPELLANT’S MOTION FOR REVIEW
OF DETERMINATION
2 GARR Div. 4 Ch. 12 § 12115(b)**

COMES NOW Appellant, DATA MANAGEMENT RESOURCES, LLC (DMR), through undersigned counsel, the Law Office of Jacqueline Taitano Terlaje, PC, to hereby request for review of the Notice of Determination, pursuant to 2 GARR Div. 4, Ch.12 § 12115(b), which provides:

After an Appeal is filed with the Public Auditor relative to method of selection, solicitation, or award pursuant to 5 GCA § 5425(e) and § 9301 of this Chapter, the Public Auditor shall review and confirm or reject any determination by the Chief Procurement Officer or the Director of Public Works pursuant to 5 GCA § 5425(g) that award of a contract without delay pending Appeal is necessary to protect the interests of the government.

On June 8, 2022, DMR sought appeal of the procurement source, selection and method herein. The May 24, 2022 Office of the Governor (OOG) Notice of Determination to Proceed was attached to the Notice of Appeal as Exhibit No. 13. No stay of the appeal was instituted by OOG after June 8, 2022. Proposals for the subject matter procurement were required to be submitted by June 10, 2022, pursuant to that Amendment No. 3.

1 On June 16, 2022, a partial Procurement Record was submitted. for On June 21, 2022, the OOG
2 submitted its Agency Report and Agency Statement confirming the submission of the Notice of
3 Determination dated May 24, 2022.

4 DMR now seeks a review of the Notice of Determination pursuant to 2 GARR Div. 4, Ch.12 §
5 12115(b), and respectfully requests that the Hearing Officer reject the Notice of Determination on the basis
6 that the procurement source, selection and method were tainted by the arbitrary conduct of the OOG
7 herein by failing to ensure that the development, method and process were strictly adhered to for purposes
8 of ensuring fair competition in the subject matter procurement.

9
10 While the OOG asserts that it is in the best interests of the Government of Guam to proceed with
11 the procurement due to the upcoming expiration of the grant funding, the Government of Guam was fully
12 aware of its obligations to diligently proceed. The OOG specifically requested an extension of the grant
13 funding for the purpose of “Digitize Business License and Permitting,” on May 27, 2021. Exhibit 15,
14 Exhibit 16 Decl. J. Terlaje (Jun. 24, 2022). Another request was made on July 16, 2021, and approval was
15 granted on July 17, 2021 extending the grant to September 30, 2022. Exhibit 16 Decl. J. Terlaje (Jun. 24,
16 2022). Notwithstanding its knowledge of the forthcoming expiration date, the OOG delayed issuance of
17 the RFP to February 7, 2022. *See* Exhibit 1 to Notice of Appeal (RFP-Office of the Governor 2022-001).
18 Notably, the request for approval asserts that the procurement of the Business License and Permit systems
19 “will be completed this fiscal year.” *See* Exhibit 15. OOG did not complete the procurement of the
20 Business License and Permit system in Fiscal Year 2021. Rather, RFP-OOG-2022-001 was not issued until
21 February 7, 2022.

22
23 Following the time period for questions, DMR submitted two separate protests. The first protest
24 was lodged on March 19, 2022, specifically addressing the deficiencies and inconsistencies of the OOG
25 responses (herein “First Protest”). The second protest was lodged on April 8, 2022 upon confirmation of
26

1 OOG's non-compliance with § 5141 of Title 5 Guam Code Annotated (herein "Second Protest"). Despite
2 its awareness of the looming expiration deadline, its previous assertions to the Department of Interior on
3 the process of procurement, and its knowledge of the obligations of the awardee for development,
4 implementation, training, licensing, maintenance and support, the OOG delayed response for 46 days, and
5 denied the protests on May 24, 2022.

6 The OOG now asserts the urgency of its procurement on the basis of the grant's expiration. *See*
7 Exhibit 13, Notice of Determination, Notice of Appeal (June 9, 2022). The lack of diligence and delay by a
8 government entity should not constitute an urgent basis in which to bypass issues raised in a procurement
9 protest, such as the case at hand; wherein, the protestant has raised serious deficiencies in the development,
10 method and process of the procurement. Exhibit 15 and 16 further support DMR's protest in the fact that
11 the OOG acknowledges that the obligations required under the RFP for development, implementation,
12 training, licensing, maintenance and support will exceed the first year of funding. Therefore, the inexcusable
13 delay by the OOG should not result in awarding its delays and its obligation to ensure that Guam policy
14 ensuring maximum competition, good management of resources, and avoidances of competitive
15 disadvantage are strictly adhered to in procurement.

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RESPECTFULLY SUBMITTED on this 24th day of June, 2022.

**LAW OFFICE OF
JACQUELINE TAITANO TERLAJE, P.C.**

BY: /s/

JACQUELINE TAITANO TERLAJE
Attorney for Appellant, *Data Management Resources, LLC*