



Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

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**In the Procurement Appeal of Data Management Resources - OPA-PA-24-004**

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Mon, Nov 18, 2024 at 4:43 PM

To: Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

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Buenas Mr. Hernandez,

Please see the enclosed Motion for Determination of Materiality of Missing Documents from Procurement Record for filing in the matter in the above caption from Attorney Terlaje dated today, November 18, 2024. Should have any difficulty opening the attachments, please contact our office and our staff will resent it. Have a nice day.

*Si Yu'os Ma'åse',**Christiana Q. Palacios**Admin Assistant/Paralegal*

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Attorney for Appellant, *Data Management Resources, LLC*

**PROCUREMENT APPEAL OF DENIAL OF PROCUREMENT PROTEST  
IN THE OFFICE OF THE PUBLIC ACCOUNTABILITY**

<b>IN THE APPEAL OF:</b>	)	<b>DOCKET NO. OPA-PA-24-004</b>
	)	
<b>DATA MANAGEMENT RESOURCES, LLC</b>	)	
Appellant,	)	<b>MOTION FOR DETERMINATION</b>
AND	)	<b>OF MATERIALITY OF MISSING</b>
	)	<b>DOCUMENTS FROM PROCUMRENT</b>
<b>PORT AUTHORITY OF GUAM,</b>	)	<b>RECORD</b>
Purchasing Agency.	)	

**I. INTRODUCTION**

Appellant, DATA MANAGEMENT RESOURCES, LLC. (hereinafter “DMR” or “Appellant”) by and through its attorney, Jacqueline Taitano Terlaje of Law Office of Jacqueline Taitano Terlaje, PC., hereby moves for determination that the missing documents in the procurement record for Invitation for Bid No. IFB-PAG-008-024 Desktop Computer Systems with Accessories by the Port Authority of Guam (hereinafter “PAG”) are material.



1 contract, whether draft or final, (and the Purchase Order) as labelled as Tab 19 in the Procurement  
2 Record, with PDS has not been provided in the documents turned over by PAG.

3  
4  
5 **III. A COMPLETE PROCUREMENT RECORD IS MATERIAL FOR DETERMINATION FOR RELIEF**  
6 **REQUESTED**

7 Guam law requires that “each procurement officer shall maintain a complete record of each  
8 procurement.” 5 GCA § 5249. Guam law states this includes “a log of communications between the  
9 government employees and any member of the public, potential bidder, vender or manufacturer which is in  
10 any way related to the procurement”. *Id* at (b). It also includes “brochures and submittals of potential  
11 vendors, manufacturers or contractors, and all drafts, signed and dated by the draftsman, and other material  
12 used in the development of specifications”. *Id* at (d). Guam law also requires that no award can be made  
13 without the procurement officer’s certification under the penalty of perjury the procurement record is  
14 maintained as required. 5 GCA § 5250.

15  
16 In evaluating this section of Guam law, the Supreme Court of Guam has held missing  
17 documents in the procurement record are material when its absence thwarts judicial review in  
18 determining whether an appellant is entitled to the requested relief. *See Telegram Holdings, LLC v.*  
19 *Territory of Guam*, 2018 Guam 5. Further, in applying the holding in *Telegram Holding LLC*, the Court  
20 in *Graphics Center, Inc v. Office of the Public Accountability, Guam Power Authority, the Territory of*  
21 *Guam, and Infosend, Inc.*, determined that failure to “substantially engage” the issue of whether the missing  
22 documents in the procurement record were material or thwart judicial review at the OPA level prevents the  
23 court from addressing the matter when brought for judicial review. *See* Decision and Order, *Graphics*  
24 *Center, Inc v. Office of the Public Accountability, Guam Power Authority, the Territory of Guam, and*

1 Infosend, Inc., filed October 29, 2024. In *Graphics Center, Inc*, the court, while it affirmed part of the OPA’s  
2 decision, it remanded the matter back to the OPA “for further agency investigation and record  
3 development”. *Id* at 7. The court stated there was no documentary support for Guam Power Authority’s  
4 argument it had not provided Infosend, Inc an exemption and the OPA was ordered to further investigate  
5 and develop the record as to the materiality of the missing documents in the procurement record.

6 In this matter, as aforementioned, the Procurement Record is devoid of (1) documents that  
7 evidence PDS did submit the required literature with their proposal and (2) documents that evidence  
8 how PAG found PDS to be a responsive bidder despite not submitting the required literature (e.g.  
9 what exemption was given to PDS that was not given to all other bidders). The primary issue of the  
10 protest is that PDS was not a responsive bidder because it failed to provide the required Descriptive  
11 Literature. Specifically, the Invitation states:

12  
13 Rejection of the Bid will be required if the descriptive literature(s) do not show that the  
14 product(s) offered conform(s) to the specifications and other requirements of this  
15 solicitation. Failure to furnish the descriptive literature(s) by the time specified in the  
Solicitation will require rejection of the bid.

16 PR, Tab 1. The Procurement Record shows that PDS’s proposal failed to include the literature  
17 required. PAG does not contest this fact. However, PDS was still awarded the procurement. A fact  
18 PAG also does not contest. The Procurement Record does not contain what exemption PAG gave  
19 PDS to determine that PDS was a responsive bidder. A fact that PAG does not contest. Further, the  
20 Procurement Record as submitted by PAG, certified to be complete, also is devoid of even the draft  
21 of the contract and Purchase Order despite a Tab coversheet in the Procurement Record for contracts.  
22 These documents are material as they are relevant to the issues in this appeal. Therefore, there needs  
23 to be a determination that the missing documents are material under the *Telegram Holdings* standard.  
24



1 Respectfully submitted this 18<sup>th</sup> day of November, 2024.

2  
3 LAW OFFICE OF  
4 JACQUELINE TAITANO TERLAJE, P.C.

5 By: /s/

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