



Jerrick Hernandez <jhernandez@guamopa.com>

Opposition to Motion for Determination of Materiality of Missing Documents from Procurement Record

Kiana M. Santos <kmsantos@portofguam.com>

Mon, Nov 25, 2024 at 10:00 AM

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Hafa Adai Jerrick,

Please accept for filing the attached
Opposition to Motion for Determination of Materiality of Missing Documents from Procurement
Record
from the PAG in OPA-PA-24-004.

Thank you,

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 **OPPOSITION TO MOTION FOR DETERMINATION OF MATERIALITY OF MISSING DOCUMENTS FROM
PROCUREMENT RECORD OPA-PA-24-004.pdf**

11/25/24, 2:10 PM

Guam OPA Mail - Opposition to Motion for Determination of Materiality of Missing Documents from Procurement Record

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10 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
11 **PROCUREMENT APPEAL**

12 IN THE APPEAL OF:)	DOCKET NO. OPA-PA-24-004
)	
13 DATA MANAGEMENT RESOURCES,)	
14 LLC,)	
)	
15 Appellant.)	OPPOSITION TO MOTION FOR
)	DETERMINATION
16 and)	OF MATERIALITY OF MISSING
)	DOCUMENTS FROM PROCUREMENT
17 PORT AUTHORITY OF GUAM,)	RECORD
)	
18 Purchasing Agency.)	

19 The Port Authority of Guam (“PAG”), hereby files its brief opposing the Motion for
20 Determination of Materiality of Missing Documents from Procurement Record filed by Data
21 Management Resources, LLC (“DMR” or “Appellant”) in its appeal of the award of a contract
22 made to Pacific Data Systems (“PDS”) in IFB-PAG-008-24, re: Procurement of Desktop
23 Computers with Accessories.

24 **I. THE RECORD IS THE RECORD**

25 The Procurement Record filed in this appeal is an accurate record of the procedure of all
26 facts in this case, and it speaks for itself. The twisted reasoning in this motion is absurd. A review
27 of DMR’s Motion and its other filings reveals that DMR does not dispute the submitted or non-
28 submitted documents in this case. Instead, DMR mischaracterizes a bidder’s alleged failure to
submit certain brochures/technical literature to the PAG as the equivalent of the PAG failing to

1 document the procurement process. This distortion of the facts does not amount to the creation
2 of a genuine factual or legal challenge to the record, and has no bearing on this case.

3 DMR misrepresents the rulings in *Telegram Holdings, LLC v. Territory of Guam*, 2018
4 Guam 5, and the Decision and Order in *Graphics Center, Inc. v. Office of the Public*
5 *Accountability, Guam Power Authority, the Territory of Guam, and Infosend, Inc.*, Civil Case
6 No. CV0207-22 (October 29, 2024). The *Teleguam* case holds that when a person, entity, bidder,
7 contractor, or anyone substantially involved in a procurement actually makes or provides
8 documents to an agency that are required to be kept as part of the procurement record, the agency
9 needs to keep those documents and put them in the record. *Teleguam*, at ¶¶40-41. If the agency
10 loses those documents or misplaces them, or they somehow go “missing,” even though they exist
11 and they were actually provided to the agency as part of the procurement, then the procurement
12 record is incomplete and the procurement is in violation of 5 GCA §§ 5249 and 5250; the
13 procurement itself may then be challenged by anyone. *Id.*

14 The facts in this case are entirely different from those in *Teleguam*. In this case, the PAG
15 has filed the Procurement Record of IFB-PAG-008-24 (“IFB”), as required by law. It is a public
16 record, it is central to the Appellant’s claims, and is the source of all of the facts referenced in
17 both the Appellant’s protest and appeal. The Procurement Record for the IFB is complete and
18 accurate as of the last supplemental record documents submitted to the OPA on November 18,
19 2024. The PAG did not lose or misplace any documents that were submitted to it. DMR’s
20 fundamental protest and appellate claim is that PDS never submitted certain brochures or
21 technical literature to the PAG at all. On this basis, it previously argued (and still argues) that
22 PDS’ bid is nonresponsive. Now, DMR is trying to claim that somehow, the PAG has omitted
23 these documents, while simultaneously arguing that the documents were not provided in the first
24 place. This argument is ridiculous. The particular brochures/technical literature about which
25 DMR complains were never part of the record. The PAG cannot omit documents that were never
26 submitted.
27
28

1 The Procurement Record is the record of all documents submitted or not submitted to the
2 PAG pursuant to the underlying procurement processes. The purportedly “missing” documents
3 are the brochures/technical literature that DMR claims PDS did not submit to the PAG as part of
4 its bid. If PDS never submitted these documents to the PAG, then obviously, the PAG’s
5 Procurement Record is complete and accurate, because it shows that these documents were not
6 submitted. This tribunal should not entertain this illogical and bizarre motion.
7

8 Perhaps even more inanely, DMR cites to the Decision and Order in *Graphics Center,*
9 *Inc. v. Office of the Public Accountability, Guam Power Authority, the Territory of Guam, and*
10 *Infosend, Inc.*, Civil Case No. CV0207-22 (October 29, 2024) to support its argument. This case
11 holds that a party may not raise the issue of an incomplete procurement record for the first time
12 before the OPA. *Id.*, at p. 4, ¶ A. A party is required to file a timely protest concerning the
13 completeness of the record, or that issue cannot be argued before the OPA. *Id.* DMR has never
14 protested, complained, or even raised the issue that the procurement record in IFB-PAG-008-24
15 was “incomplete” prior to this appeal. DMR is barred from raising the issue now. *Id.*
16

17 II. CONCLUSION

18 DMR has failed to show that it is entitled to review or relief on its incongruous and
19 incomprehensible claims. Therefore, the PAG respectfully requests that DMR’s Motion for
20 Determination of Materiality of Missing Documents from Procurement Record be denied.
21

22 Submitted this 25th day of November, 2024.

23 PORT AUTHORITY OF GUAM

24
25 By:  _____

26 JESSICA TOFT
27
28