



Jerrick Hernandez <jhernandez@guamopa.com>

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

LEGAL ASST <legal@terlajelaw.com>

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To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: Jacqueline Terlaje <jterlaje@terlajelaw.com>, "Kristine B. Borja" <kbborja@terlajelaw.com>, "Jessica L. Toft" <jtoft@portofguam.com>, ADMIN DESK <info@terlajelaw.com>

Hafa Adai, Jerrick.

Please see enclosed Data Management Resource LLC's Opposition to Port Authority of Guam's Motion for Dismiss for filing in the above-referenced matter. If you have any questions, please contact our office at (671) 648-9001. Have a nice day.

Si Yu'os Ma'ase,
Tatiana Anderson
Office Manager

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

284 West Chalan Santo Papa

Hagatna, Guam 96910

Telephone 671.648.9001

Facsimile 671.648.9002

Whatsapp: 671.648.9001

info@terlajelaw.com

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 **25Nov24 DMR Opp to MTD.pdf**
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Jacqueline Taitano Terlaje
LAW OFFICE OF JACQUELINE TAITANO TERLAJE, P.C.
284 W Chalan Santo Papa
Hagåtña, Guam 96910
Telephone 671.648.9001
Facsimile 671.648.9002
Email: info@terlajelaw.com

Attorney for Appellant, *Data Management Resources, LLC*

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

IN THE APPEAL OF:)	DOCKET NO. OPA-PA-24-004
)	
DATA MANAGEMENT RESOURCES, LLC)	
Appellant,)	OPPOSITION TO
AND)	PORT AUTHORITY OF GUAM'S
)	MOTION TO DISMISS
PORT AUTHORITY OF GUAM,)	
Purchasing Agency.)	

I. INTRODUCTION

II. 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 submits its opposition to purchasing agency’s, Port Authority of Guam (hereinafter “PAG”), motion to dismiss. This opposition is based on the following points and authorities and such oral and documentary evidence as may be adduced at any hearing on the matters.**RELEVANT PROCEDURAL AND FACTUAL BACKGROUND**

PAG announced the Invitation for Bid No. IFB-PAG-008-024 Desktop Computer Systems with Accessories (hereinafter “Invitation”) in May 2024. Procurement Record (“PR”), Tab 1. The

1 announcement stated submissions were due by June 12, 2024. *Id.* There were at least four (4)
2 amendments made to the Invitation. PR, Tab 4. Four (4) bids were received by PAG in response to the
3 Invitation, including Appellant’s proposal and Pacific Data Systems’s (hereinafter “PDS”) proposal. PR,
4 Tab, 12.

5 PAG held the bid opening on June 12, 2024, but did not evaluate the bids at that time. PAG
6 determined PDS’s bid complied with the requirements of the Invitation and its bid was responsive on
7 June 19, 2024. PR, Tab 13. PAG determined PDS was the lowest responsive bidder on June 25, 2024.
8 PR, Tab 16. DMR received notice of the Bid Status on June 28, 2024. PR, Tab 15. The Bid Status noted
9 PDS was recommended for the award and DMR’s proposal was rejected. *Id.* PAG issued the Notice of
10 Award on June 28, 2024. PR, Tab 17. DMR acknowledged the Bid Status on July 17, 2024. PAG did
11 not provide DMR with the Notice of Award. DMR timely filed its Protest on June 28, 2024, and raised
12 the issue that PDS was a non-responsive bidder for not providing required literature with its proposal.
13 PR, Tab 20.

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16 **III. A PARTY BECOMES AGGRIEVED WHEN THEY ARE ENTITLED TO A REMEDY**

17 PAG first argues the Office of Public Accountability (hereinafter “OPA”) has no jurisdiction over
18 this matter because it argues that DMR’s protest was filed untimely. *See* Motion to Dismiss, filed November
19 18, 2024. Under Guam law, a procurement protest is to be “submitted in writing within fourteen (14) days
20 after such aggrieved person knows or should know of the facts giving rise” to the basis for the protest. 5
21 GCA § 5425(a). The Supreme Court of Guam has held that a party becomes aggrieved when the party
22 becomes entitled to a remedy. DFS Guam L.P. v. A.B. Won Pat Int’l Airport Auth., Guam, 2020 Guam 20,
23 ¶ 84 (Guam Dec. 7, 2020) (internal citations omitted). The timeliness of a protest must be analyzed in “in
24 relation to the underlying facts”. *Id.* at ¶ 78 (citing *Guam Imaging*, 2004 Guam 15 ¶ 24). Further, this analysis
25 must be viewed in a light most favorable to the non-moving party. *Id.* (internal citations omitted).
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1 Accordingly, a party is aggrieved when (1) “they become aware of a violation of one of the procurement law's
2 substantive provisions” or (2) violation of “the terms” of the purchasing agency’s terms announced. *Id.* at
3 84.

4 In this instant matter, it is undisputed that PAG did not evaluate the bids at the bid opening on June
5 12, 2024. It is further undisputed that when PAG read out the bids on June 12, 2024, it just read the forms
6 as submitted and did determine compliance of each bid. It is further undisputed the bids were evaluated
7 sometime after June 12, 2024. PR, Tab 16. PAG states the evaluations were conducted on June 28, 2024. *See*
8 *Opposition to Motion for Determination of Materiality of Missing Documents from Procurement Record*,
9 filed on November 25, 2024. DMR only becomes aware of the fact the evaluations were completed on June
10 28, 2024 when the notice of award to PDS was announced. *See* *Comments on Agency Report*, filed October
11 21, 2024.

12 DMR does not become entitled to a remedy until the evaluations were completed. This date is June
13 28, 2024, by PAG’s own admission in its filings. Thus, the fourteenth day for DMR to file a protest was July
14 12, 2024. It is undisputed that DMR filed its protest on July 12, 2024. Therefore, DMR’s protest was timely
15 and the Office of Public Accountability has jurisdiction over the appeal of PAG’s denial of DMR’s protest.
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19 **IV. AN AGGRIEVED BIDDER HAS A RIGHT TO FILE A PROTEST WITH THE PURCHASING
20 AGENCY**

21 PAG next argues that DMR failed to exhaust all administrative remedies before filing its protest. *See*
22 *Motion to Dismiss*, filed November 18, 2024. PAG’s *Id.* at 8. PAG argues DMR fails to give a reason why it
23 did not contact PAG “through an email, a phone call, or in person” to raise its concerns “during the bid
24 evaluations, and before award”. *Id.* Under Guam law, specifically states:

25 Right to Protest. Any actual or prospective bidder, offeror, or contractor who may be aggrieved
26 in connection with the method of source selection, solicitation or award of a contract, may
27 protest to the Chief Procurement Officer, the Director of Public Works or the head of a

1 purchasing agency. The protest shall be submitted in writing within fourteen (14) days after
2 such aggrieved person knows or should know of the facts giving rise thereto.

3 5 GCA 5425(a). Neither Guam's procurement statute nor any holding by the Supreme Court of Guam
4 interpreting the statute impose a step prior to a protest being filed with a purchasing agency. Rather, it has
5 held that "an administrative remedy has been provided by statute, this remedy must be exhausted before the
6 courts will act." DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam, 2020 Guam 20, ¶ 61 (Guam
7 Dec. 7, 2020)(citing *Holmes*, 1998 Guam 8 ¶ 9). The statute clearly states the pre-litigation remedy is the right
8 to file a protest. PAG is asking the OPA to impose a step that is against the codified rights as stated in the
9 procurement laws of Guam. Therefore, DMR properly invoked its statutory right to protest under the Guam
10 law and properly appealed the denial of the protest.

11 **V. AN AGGRIEVED BIDDER DOES NOT HAVE TO BE THE NEXT LOWEST BIDDER TO PROTEST**

12 Lastly, PAG argues DMR does not have standing to protest due to (1) in the PAG's opinion DMR
13 did not allege a relief that can be granted and (2) that DMR does not have standing to protest since it was
14 not the next lowest bidder. The standing issue will be addressed first.

15 As aforementioned, Guam law specifically states who qualifies to protest. Guam law states:

16 Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection
17 with the method of source selection, solicitation or award of a contract, may protest to the
18 Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency.
19 The protest shall be submitted in writing within fourteen (14) days after such aggrieved person
20 knows or should know of the facts giving rise thereto.

21 5 GCA 5425(a). PAG's argument is in direct conflict with Guam law that "**any** actual or prospective bidder,
22 offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation
23 or award of a contract, may protest." *Id.* Neither Guam's statute nor any holding of the Supreme Court of
24 Guam has defined or interpreted this to mean that it must be the next lowest bidder to lodge a protest. PAG
25 tries to argue that the protestor must be a "direct economic interest would be affected".

26 The Supreme Court of Guam has held time and time again that unless a word is defined by
27 Legislature, it is given its plain meaning. The statute does not define "aggrieved". Aggrieved is defined as

1 “having legal rights that are adversely affected; having been harmed by an infringement of legal rights”.
2 Black’s Law Dictionary, Ninth Addition. PAG fails to understand that the issue in this matter is that it failed
3 to properly apply the procurement process to the bids it received and that application is the right DMR is
4 entitled to. Therefore, DMR is an aggrieved party.

5 Lastly, DMR will address PAG’s argument that it failed to state a relief that can be granted. PAG
6 acknowledges one of the reliefs that DMR seeks is cancellation of the award. *See* Opposition to Motion for
7 Determination of Materiality of Missing Documents from Procurement Record, filed on November 25, 2024,
8 at 8 to 13. PAG attempts to argue that this a post-award and cancellation of the contract is not the proper
9 relief. *Id.* However, PAG argument is in direct contravention of (1) Guam’s law and (2) the Supreme Court
10 of Guam’s holding.
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12 PAG correctly cites that the pre-award remedy under Guam law is to cancel the contract. However,
13 it attempts to argue that this remedy is not proper because PDS was already awarded the contract. PAG
14 seems to not understand the law states “cancel the contract”. The Procurement record is devoid of the
15 contract, a draft of the contract, or any purchase order to PDS. *See* PR, Tab 19 and Motion for Determination
16 of Materiality of Missing Documents from the Procurement Record, filed November 18, 2024. PAG does
17 not deny this in their Opposition to the Motion for Determination of Materiality of Missing Documents
18 from the Procurement Record. Opposition to the Motion for Determination of Materiality of Missing
19 Documents from the Procurement Record, filed November 25, 2024. The Procurement Record fails to
20 establish the items were already purchased. Therefore, the correct remedy is to cancel the contract as DMR
21 requests.
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1 properly invoked its statutory right to protest under Guam law and properly appealed the denial of the
2 protest.

3 Lastly, PAG argues DMR does not have standing to protest due to (1) in the PAG's opinion DMR
4 did not allege a relief that can be granted and (2) that DMR does not have standing to protest since it was
5 not the next lowest bidder. Guam law states that "**any** actual or prospective bidder, offeror, or contractor
6 who may be aggrieved in connection with the method of source selection, solicitation or award of a contract,
7 may protest." 5 GCA 5425(a). Neither Guam's statute nor any holding of the Supreme Court of Guam has
8 defined or interpreted this to mean that it must be the next lowest bidder. Rather, it is "having legal rights
9 that are adversely affected; having been harmed by an infringement of legal rights". Black's Law Dictionary,
10 Ninth Addition. The issue in this matter is that PAG failed to properly apply the procurement process to the
11 bids it received and that is the right DMR is entitled to. Therefore, it is an aggrieved party.
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13 Further, PAG's argues that DMR failed to state a relief that can be granted. PAG acknowledges one
14 of the reliefs that DMR seeks is cancellation of the award, but argues cancellation of the contract is not the
15 proper relief. *See* Opposition to Motion for Determination of Materiality of Missing Documents from
16 Procurement Record, filed on November 25, 2024, at 8 to 13. PAG argument is again in direct contravention
17 of (1) Guam's law and (2) the Supreme Court of Guam's holding. The Procurement Record is devoid of the
18 final contract, a draft of the contract, or any Purchase Order to PDS. *See* PR, Tab 19 and Motion for
19 Determination of Materiality of Missing Documents from the Procurement Record, filed November 18,
20 2024. Thus, the correct remedy is to cancel the contract as DMR requested.
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22 Therefore, PAG's motion should be denied based on the above and such oral and documentary evidence
23 as may be adduced at any hearing on the matters
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1 Respectfully submitted this 25th day of November, 2024.

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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*