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

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Mon, Dec 2, 2024 at 4:47 PM

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**Hafa Adai, Jerrick.**

**Please see enclosed Data Management Resource LLC's Reply to Opposition to Motion 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*

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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>REPLY TO OPPOSITION TO</b>
AND	)	<b>MOTION FOR DETERMINATION</b>
	)	<b>OF MATERIALITY OF MISSING</b>
<b>PORT AUTHORITY OF GUAM,</b>	)	<b>DOCUMENTS FROM PROCUMRENT</b>
Purchasing Agency.	)	<b>RECORD</b>
	)	

**I. INTRODUCTION**

Port Authority of Guam (hereinafter “PAG”) concedes the documents Data Management Resources, LLC (hereinafter “DMR” or “Appellant”)’s identified in its motion are missing from the Procurement Record. PAG also concedes these documents are material to the determination for relief sought in this appeal.

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1 determined PDS to be a responsive bidder. The absence of the Required Literature in the procurement  
2 record is prima facie evidence of the failure of PAG to properly evaluate the submitted bids, and  
3 improperly granting PDS an exception, whereas Appellant was required to conform its bid to the  
4 specifications. The absence of documents in the Procurement Record to support PDS's  
5 responsiveness to procurement is the crux of the issue.

6 As conceded by PAG in its position that the Procurement Record is complete as submitted,  
7 these documents do not exist. Thus, the evaluation that PDS's bid was responsive and eligible to be  
8 considered along side the other bids is a violation of Guam's procurement laws. Therefore, the award  
9 to PDS should be stayed and ultimately cancelled.

10 As to the documents for any contract, whether draft or final, as labelled as Tab 19 in the  
11 Procurement Record, these missing documents are also material. PAG argues that it is in the interest  
12 of the People of Guam to continue with the procurement as awarded. *See Motion to Dismiss* (Nov. 18,  
13 2024). However, PAG fails to show any reason why the contract in this procurement cannot be  
14 cancelled, if it exists. PAG, by its own concession that the Procurement Record is complete despite no  
15 contract with PDS, even in draft form, is contained within the Procurement Record, fails to show how  
16 the clear violation of Guam's procurement laws in this matter is in the best interest of the People of  
17 Guam. It is of great concern that the Purchase Order in this case is dated July 24, 2024, when it is  
18 irrefutable that Appellant filed its protest on July 12, 2024. *See Second Supplement to Procurement*  
19 *Record* (Nov. 18, 2024). This shows PAG continued with the procurement when it should have been  
20 stayed once the protest was filed. This further shows PAG continues to willingly act contrary to Guam  
21 procurement law and make exemptions for PDS.  
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1 Further, PAG argues Appellant has misconstrued the court’s holding in *Graphics Center, Inc.* that  
2 a court cannot address whether documents not contained in the Procurement Record are material in a  
3 case if the issue of materiality is not fully addressed at the Office of Public Accountability (hereinafter  
4 “OPA”) appeal level first. *See* Decision and Order, Graphics Center, Inc v. Office of the Public  
5 Accountability, Guam Power Authority, the Territory of Guam, and Infosend, Inc. (Oct. 29, 2024). In  
6 *Graphics Center, Inc.*, the court ordered the case remanded back to the OPA for investigation and development  
7 of the record that the documents not contained in the Procurement Record are material. *Id.* Appellant’s  
8 motion is to make the appeal record clear that the Required Literature, documents of any exemption granted  
9 to PDS only, and the contract with PDS are material in this case. It is unclear how this is a misapplication  
10 of *Graphics Center, Inc.’s* holding.

12 Lastly, PAG argues Appellant also misapprehends *Telegram Holding, LLC*. *See* Opposition to Motion  
13 for Determination of Materiality of Missing Documents from Procurement Record, (Nov. 25, 2024). The  
14 court in *Telegram Holding, LLC* held that missing documents in the Procurement Record are material  
15 when its absence prevents a judicial review of whether an appellant is entitled to the requested relief.  
16 *See Telegram Holdings, LLC v. Territory of Guam*, 2018 Guam 5. Once more, it is undisputed that  
17 Appellant’s claims center on the fact PDS did not submit the Required Literature to be properly  
18 evaluated as a responsive bid for the procurement. The missing documents are material, because they  
19 are basis for the relief sought in this matter: (1) a finding that PAG failed to evaluate PDS’s submission  
20 properly and granted PDS an exemption not afforded to Appellant; and (2) the procurement should  
21 be stayed and any contract cancelled.

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1 Respectfully submitted this 2<sup>nd</sup> day of December, 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*  
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