



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

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**OPA-PA-25-006 - (1) Appellant's Comments on the Purchasing Agency Report and Statement**

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**Janet Sardoma** <ofc.manager@pacificlawyers.law>

Mon, May 12, 2025 at 3:37 PM

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

Cc: "Daniel J. Berman" &lt;djberman@pacificlawyers.law&gt;, "Christine A. Pangelinan" &lt;chrisap@pacificlawyers.law&gt;

Dear Mr. Hernandez:

Please see the attached document for filing in the above matter. Please note the following:

Filer's name:	Daniel J. Berman, Esq.
Email address:	djberman@pacificlawyers.law chrisap@pacificlawyers.law
Phone number:	671-477-2778
Number of documents attached:	One (1)
Name of each attached document:	(1) Appellant's Comments on the Purchasing Agency Report and Statement
Total number of pages attached:	Eight (8)

Please return a filed/received copy by email.

Regards,

**Janet S. Sardoma**

Office Manager

**Berman Law Firm**

111 Chalan Santo Papa, Suite 503

Hagatna, Guam 96910

T-(671) 477-2778

F-(671) 477-4366

Email: ofc.manager@pacificlawyers.law

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**Berman Law Firm**

111 W Chalan Santo Papa Ste 503

Hagatna GU 96910

(671) 477-2778 (Office)

(671) 477-4366 (Fax)

[Guam@PacificLawyers.law](mailto:Guam@PacificLawyers.law)Member, Pacific Lawyers [www.pacificlawyers.law](http://www.pacificlawyers.law)

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1 BERMAN LAW FIRM  
Suite 503, Bank of Guam Bldg.  
2 111 Chalan Santo Papa  
Hagåtña, Guam 96910  
3 Telephone No.: (671) 477-2778  
Facsimile No.: (671) 477-4366  
4

5 Attorneys for Appellant:  
GLIMPSES OF GUAM, INC.  
6

7 **BEFORE THE GUAM VISITORS BUREAU**

8 IN THE APPEAL OF

Docket No. OPA-PA-25-006

9 GLIMPSES OF GUAM, INC.,

**APPELLANT'S COMMENTS ON THE  
PURCHASING AGENCY REPORT AND  
STATEMENT**

10 Appellant.  
11

12 These Comments on the Guam Visitors Bureau ("GVB") Purchasing Agency  
13 Report and Statement issued May 2, 2025 are submitted by the Appellant GLIMPSES  
14 OF GUAM, INC. ("Glimpses") and incorporate that which were set forth in its May 7,  
15 2025 Motion for Summary Judgment, together with Declaration of Glimpses' Counsel  
16 and its Exhibits "1" to "10".

17 **I. INTRODUCTION**

18 This is a simple case. Glimpses is a local Guam corporation which submitted a  
19 bid on a Request for Proposal ("RFP") from the Guam Visitors Bureau ("GVB") for a  
20 contract to perform marketing and advertising services for GVB. Another bidder  
21 named Manhita or "The Manhita Team" (herein "Manhita") was evaluated as the  
22 number 1 bidder. Manhita was evaluated based on its partners or team that included  
23 SKIFT, Big Fish Creative Inc. and RIMS. Although RIMS submitted no bid individually,  
24 only RIMS was awarded the contract from GVB.

25 **II. BACKGROUND FACTS**

26 **Appeal Information**

27 A. Purchasing Agency: Guam Visitors Bureau  
28

B. Procurement No.: GVB RFP 2025-002 Integrated Communications, Advertising and Even Support Service

C. Names of competing Bidders, Offerors, or Contractors known to Appellant: "The Manhita Team"; Galaide; and, Greenlight.

D. On March 21, 2025, "The Manhita Team" bid was first disclosed.

E. On February 4, 2025, Glimpses filed its Notice of Procurement Protest.

F. On March 11, 2025, Glimpses filed its first Notice of Procurement Appeal.

G. On April 2, 2025, Glimpses filed its Notice of Second Procurement Protest.

H. On April 17, 2025, Glimpses filed its Notice of Second Procurement Appeal.

I. No date is known for a GVB Decision Denying Glimpses Second Protest.

### **1. Details of Background**

On December 27, 2024, GVB issued RFP 2025-002.

On January 17, 2025, "The Manhita Team" submitted its bid<sup>1</sup>. See Exhibit "1", a true and accurate, 7-page excerpt copy, of The Manhita Team bid, Bates No. GVB0697 through GVB074, attached. Likewise, on January 17, 2025, Glimpses also timely submitted its bid.

On January 17, 2025, GVB evaluation of four (4) bidders was completed and The Manhita Team was ranked number 1 with 271 points. See Exhibit "2", GVB Evaluations of four (4) bidders, attached.

On January 21, 2025, GVB sent Notice of Intent to Award to Glimpses and advised that Ruders Integrated Marketing Strategies ("RIMS") shall be awarded the new contract. See Exhibit "3", GVB Notice of Intent to Award, attached.

On January 27, 2025, Glimpses served its Sunshine Law and FOIA Request for all documents that included "1. The bid submissions of RIMS ... correspondence and

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<sup>1</sup> References to numbered exhibits "1" through "10" herein are the exhibits in support of Glimpses' Motion for Summary Judgment filed on May 7, 2025 in OPA-PA-002.

documents of all kind and nature related to bid submissions for GVB RFP No. 2025-002". *See* Exhibit "4", attached.

On February 1, 2025, GVB refused to produce and concealed "The Manhita Team" bid, but produced that part of the procurement record that they elected and preferred to show to Glimpses.

On February 24, 2025, GVB Notice to Glimpses was issued that the Award was necessary without delay to protect the substantial interests of Guam. *See* Exhibit "5", attached. However, this GVB Notice failed to comply with 5 GCA § 5425(c) Decision (2) "inform the protestant of its right to administrative and judicial review".

On March 21, 2025, GVB signed its Procurement Record. *See* GVB Procurement Record cover sheet, Exhibit "6", attached. Glimpses then received for the first time disclosure of "The Manhita Team" bid. *See* Exhibit "1". But, no bid was submitted individually by RIMS. Therein, Glimpses learned for the first time that on March 4, 2025, GVB acted, without notice to the public, to allegedly execute a contract solely with RIMS. *See* Decision Denying Protest, Exhibit "7" at ¶14, p. 3.

In the GVB evaluation, "The Manhita Team" was ranked first with 271 points, and Glimpses was ranked third with 220 points. However, only RIMS received a contract from GVB, not "The Manhita Team". *See* Exhibit "1" ("The Manhita Team" bid excerpt first 7 pages).

On April 2, 2025, Glimpses filed its Notice of Second Procurement Protest to the GVB. Therein, at p. 3 and throughout, Glimpses invoked the automatic stay of 5 GCA § 5425(g).

On April 17, 2025, Glimpses filed its Notice of Second Procurement Appeal to the Office of Public Accountability ("OPA"). Therein, at p. 3 and throughout, Glimpses invoked the automatic stay of 5 GCA § 5425(g).

a. **No Individual Bid of RIMS Was Ever Submitted in Response to the RFP**

Based on the disclosure of the GVB Procurement Record, the OPA may see that "The Manhita Team" submitted a comprehensive bid for the award of the contract. See Exhibit "1". Fourteen (14) times "The Manhita Team" is specifically named in their bid submission. Exhibit "1". However, GVB has no intention and, according to its documents, has not awarded or executed any contract with "The Manhita Team".

The latest reports and documents from DRT show that no such "Manhita Team" was incorporated, is not a filed partnership and nor a dba of any actual companies associated with the "Team"; that are, Big Fish Creative, Inc., Ruder Integrated Management Services, Inc. and SKIFT.

Instead, the DRT documents available to the public reveal that corporation papers do exist for an entirely separate "Manhita Corporation" (1998) and "Manhita Guam LLC" (2012) which are duly authorized and established corporations. See Exhibits "8" and "9", respectively. None of the available recorded papers from DRT relate to "The Manhita Team". "Manhita Guam LLC" was organized on August 8, 2012 for the purpose of "coin-operated ..." laundry facilities; and, "Manhita Corporation" was formed on March 27, 1997 to engage in operation of a "bar and restaurant". See Exhibit "9", DRT filed Manhita Articles of Organization and Incorporation, respectively. Review of DRT filings supports only the thesis that The Manhita Team is not only an illusion, but misrepresented other duly registered and existing Guam corporations with no legal connection to this "Manhita Team".

GVB has only one factual basis in the procurement record to conclude, as it did, that: "Big Fish and RIMS partnered" and "... a formal partnership, formed to respond to the ICAESS RFP ..." existed. See Decision Denying Protest at pg. 2, ln. 18, Exhibit "7". The Partnership Agreement between only RIMS and Big Fish Creative, excluding SKIFT, was produced. See Exhibit "10", Partnership Agreement. But no assignment or

1  
2 delegation exists of all of Big Fish Creative and SKIFT's rights to the GVB contract.  
3 GVB called the prevailing bidder as "RIMS' submission ...". *Id.* at pg. 3, ln. 18-19; *also*,  
4 p. 4, ln. 3 ("RIMS/Manhita submission" and "Skift"). But, GVB can only make a case  
5 that "The Manhita Team" is an informal collaboration of three (3) separate entities; and  
6 as such, the award could only be to "The Manhita Team".

7 The bid documents that Manhita filed, and what GVB recognized, was received  
8 as "The Manhita Team" bid. This is confirmed in the Evaluation sheets. Specifically,  
9 the actual evaluations of GVB were graded only on the understanding and express  
10 finding that "Manhita" or "The Manhita Group" was the bidder on the RFP. *See* Exhibit  
11 "2", Evaluations at GVB0243, GVB0255, GVB0256, GVB0265, GVB0266, GVB0275 and  
12 GVB0276. At no time was RIMS evaluated as a sole bidder. In a final analysis, it  
13 appears this Manhita group represented themselves as a joint venture entity while  
14 taking the name "Manhita" from other duly registered existing DRT corporations.

15 No stretch can be made that "The Manhita Team" may call itself a fictitious name  
16 or dba of RIMS. It is clear that Big Fish Creative Inc. and SKIFT are significant and  
17 major parts or partners in this bid. Because this "Team" is not a dba, or a duly licensed  
18 and registered partnership that requires identification and a government filing and  
19 approval to create such fictitious entity, the bid is a misrepresentation of another  
20 individual party or company who was awarded the contract; i.e. RIMS. The non-bidder  
21 RIMS has been individually awarded the sole contract for the marketing services  
22 required by the RFP.

23 GVB is not allowed to accept, select and award a public contract to a individual  
24 party who was not evaluated and had no individual bid timely submitted in response  
25 to the RFP of GVB.

26 5 GCA §5216(e) provides that:

27 (e) Award. Award shall be made to the offeror determined in  
28 writing by the head of the purchasing agency or a designee of such  
officer to be best qualified based on the evaluation factors set forth

1           in the Request for Proposals, and negotiation of compensation  
2           determined to be fair and reasonable. If compensation cannot be  
3           agreed upon with the best qualified offeror, the negotiations will be  
4           formally terminated with the selected offeror. If proposals were  
5           submitted by one or more other offerors determined to be qualified,  
6           negotiations may be conducted with such other offeror or offerors,  
7           in the order of their respective qualification ranking, and the  
8           contract may be awarded to the offeror then ranked as best  
9           qualified if the amount of compensation is determined to be fair  
10          and reasonable. (emphasis added)

11           In a very similar Federal procurement case, the 1984 Court of Claims in *Mil-Tech*  
12          *Systems* found that a non-bidding entity cannot simply buy a procurement award for a  
13          contract:

14           After submitting the low bid for a government contract, the bidder  
15           sold all of its stock to another corporation for nominal  
16           consideration but continued to exist as a wholly-owned subsidiary  
17           of the acquiring corporation. The contract, if awarded, would have  
18           been performed by the bidder. The government found the bidder  
19           ineligible for the contract award because the bidder's sale of its  
20           stock amounted to a prohibited sale of a bid to a non-bidding  
21           entity. The bidder filed suit for declaratory and injunctive relief.  
22           The court denied the bidder's claim and awarded summary  
23           judgment to the government. The court held that, although no  
24           statute or regulation prohibited transfer of a bid, the government's  
25           decision was both authorized and rational. In so holding, the court  
26           found that the decision of the government's contracting officer was  
27           consistent with decisions of the General Accounting Office  
28           disallowing the transfer of a bid in conjunction with the sale to a  
            non-bidding entity of assets of negligible or insubstantial value for  
            nominal consideration. The court found that, under the  
            circumstances, an award to the bidder would have subverted the  
            integrity of the procurement process. (emphasis added)

*Mil-Tech Systems, Inc. v. United States*, 6 Cl. Ct. 26, 27 (1984).

            By analogy, the Federal Assignment of Contracts Act, 41 U.S.C. § 6305, prohibits  
the transfer of a government contract to another entity unless the government consents  
to the transfer or the transfer that occurs "by operation of law" (e.g., through a merger).  
*See Tuftco Corp. v. U.S.*, 614 F.2d 740, 745 (Ct. Cl. 1980). Formal consent for a transfer of



1  
2 a contract is obtained through the novation process involving government review and  
3 approval, which is governed by FAR Subpart 42.12. Agencies may not award a contract  
4 with the intent to transfer the contract to another entity. *See, e.g., Acepex Mgmt. Corp., B-*  
5 *283080 et al.*, October 4, 1999, 99-2 CPD ¶ 77.

6 **b. GVB's Purported Notice of a Public State of Emergency and**  
7 **Necessity to Protect Substantial Interests of Guam Dated**  
8 **February 24, 2025 Is Void**

9 GVB alleges that a February 24, 2025 Notice of Determination of Award Without  
10 Delay has sheltered GVB from compliance with 5 GCA § 5425(g) (Automatic Stay). *See*  
11 Exhibit "5". However, GVB has failed to comply with the Guam Procurement Code in  
12 several respects.

13 First, GVB must comply with 5 GCA § 5425(c) Decision (2) and "inform the  
14 protestant of its right to administrative and judicial review". Here, the Decision  
15 Denying Protest served on March 24, 2025 (Exhibit "7") is utterly devoid and omits any  
16 statutorily required language that informs Glimpses of its rights to protest and appeal.  
17 Likewise, GVB's notice dated February 24, 2025 omits the critical and statutorily  
18 required notice of appeal within two (2) days rights. *See* Exhibit "5".

19 Second, GVB failed to issue its Decision Denying Protest first - that is the  
20 statutory order - required by the code. At Section 5425(c), the Decision is required prior  
21 to the use and invocation of Section 5425(g)(2) and (3). The reason is clear. A protestant  
22 must be informed of their right to administrative and judicial review within the  
23 extremely short period of two (2) days after receipt of Notice of Determination of  
24 Award Without Delay.<sup>2</sup>

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25 <sup>2</sup> The protestant can of course always appeal an agency decision "to the Public Auditor within fifteen (15)  
26 days after receipt by the protestant of the notice of decision." *See Pac. Data Sys., Inc. v. Guam Dep't of*  
27 *Educ.*, 2024 Guam 4, ¶21, citing 5 GCA § 5425(e). A protestant can challenge a procurement on "any  
28 phase of solicitation or award including, but not limited to, specifications preparation, bid solicitation,  
award, or disclosure of information marked confidential in the bid or offer." *See DFS Guam L.P. v. A.B.*  
*Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 84, citing 2 GAR Div. 4 § 9101(c)(2). It is possible that  
many different events that spring from the same solicitation can trigger a protest. *Id.* citing *Guam*  
*Imaging*, 2004 Guam 15 ¶ 28 (citing 26 GAR § 16901(c)(2)). Sometimes, the announcement of an award can  
reveal new facts that form a basis for a protest. *See DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth.*,

Third, § 5425(g)(3) is dependent on § 5425(c)(2). Without the Decision and statutorily required information given to a protestant of the right to administrative review, the protestant cannot know that he has merely two (2) days to challenge a finding of an alleged state of emergency or substantial interests of Guam.<sup>3</sup> In this case, the override of the automatic stay was arbitrary, capricious and an abuse of agency discretion. See Exhibit "5". This is because the only thing attached to justify the Notice was a consultant's findings of what was advisable to procure. *Id.* GVB made no serious attempt to consider the effect on the procurement system integrity when it overrode the automatic stay. See *URS Fed. Servs., Inc. v. United States*, 102 Fed. Cl. 664, 673-74 (2011).

Fourth, to the present, GVB has not disclosed any contract executed by the prevailing bidder "The Manhita Team" despite the duty to do so under the procurement law requiring the full record of the procurement to be filed and produced with the whole GVB procurement record on appeal.

#### CONCLUSION

Glimpses submits that a re-bid of this procurement is required so that a level playing field of individual bidders that may include Glimpses, Big Fish Creative Inc., SKIFT and RIMS is allowed and taken under full consideration in the GVB evaluations.

DATED this 12 day of May, 2025.

Respectfully submitted,

BERMAN LAW FIRM  
Attorneys for Appellant  
GLIMPSES OF GUAM, INC.

By:

  
DANIEL J. BERMAN

*Guam*, 2020 Guam 20, ¶ 88. A challenge to the failure to legally implement the automatic stay survives the signing of a contract because the agency acts at its peril by going forward into a contract improperly, and will be subject on appeal to the reviewer's power to restore the status quo. *Id.* at 149.

<sup>3</sup> *Techconsulting, LLC v. United States*, 129 Fed. Cl. 208, 215 (2016). The automatic stay provision cannot function, as intended, if potential bid protestors do not know how long they have to file before they lose their right to an automatic stay.