

1 **OFFICE OF THE GOVERNOR OF GUAM**
Ricardo J. Bordallo Governor's Complex
2 Adelup, Guam 96910
Phone: (671) 475-9370
3 Facsimile: (671) 477-4826
4 Email: sandra.miller@guam.gov

5 Attorney for Respondent *Governor of Guam*

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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6 **THE OFFICE OF PUBLIC ACCOUNTABILITY – GUAM**
7 **HAGÁTÑA, GUAM**

8
9 In the Appeal of,)
10 DATA MANAGEMENT RESOURCES, LLC,)
11 Appellant)
12)
13)

Docket No.: **OPA-PA-12-007**
OPPOSITION TO SPECIAL
ENTRY OF APPEARANCE BY
THE OFFICE OF THE
ATTORNEY GENERAL

14 **INTRODUCTION**

15 On November 26, 2012, and under color of "*its own right*," the Office of the Attorney
16 General entered a special appearance in this appeal ostensibly "*for the sole purpose of upholding*
17 *the procurement law of Guam*" and to ensure that any settlement herein "*comports with the*
18 *Government Spending Act as set forth in 5 GCA.*"

19 The Attorney General justifies its forcible interjection as being necessary in order to
20 further the generalized objective of exposing admittedly "*suspected*," but unproven, collusive
21 and anticompetitive practices. [SUPPLEMENTAL MEMORANDUM at p. 4, ll. 19-20 (OPA Dec. 13,
22 2012)].
23

1 For the reasons below, the Attorney General's special entry of appearance in this appeal
2 is improper and must be DENIED.

3
4 **LEGAL DISCUSSION**

5 **I.**

6 **THE PUBLIC AUDITOR DOES NOT HAVE JURISDICTION TO HEAR**
7 **EVIDENCE AND DECIDE THE SUSPECTED ILLEGALITY ISSUES**
8 **RAISED BY THE ATTORNEY GENERAL**

9 **A. The Public Auditor's jurisdiction is limited to issues raised in the initial**
10 **procurement protest.**

11 The Public Auditor has the power to review and determine de novo any matter properly
12 submitted to her. [5 G.C.A. § 5703]. To this end, it is more than well settled that the Public
13 Auditor's jurisdiction and power is strictly limited to reviewing only those issues on appeal that
14 were either raised by the appellant in its initial protest or in the agency's decision denying the
15 protest. [5 G.C.A. § 5425(e).]

16 In other words, if a particular issue is not one that was raised in DMR's protest letter that
17 was sent to GSA on March 13, 2012¹, or if it was not raised in GSA's response to the protest
18 dated March 14, 2012², then the issue is not properly before the Public Auditor because it is
19 appearing for the first time on appeal and there is no decision from GSA for the Public Auditor
20 to review. [*See, In re. Allied Pacific Buildings, Inc., Decision and Order, OPA-PA-12-010* at p.

21
22 ¹ Exhibit 2 to Appellant's NOTICE OF APPEAL AND REQUEST FOR HEARING (OPA April 2, 2012).

23 ² Exhibit 3 to Appellant's NOTICE OF APPEAL AND REQUEST FOR HEARING.

1 6, ll. 12-27 (OPA June 14, 2012); In re. Infratech International, Inc., Decision, OPA-PA-11-019,
2 OPA-PA-11-020, OPA-PA-11-021 at pp 11- 12 (OPA Mar. 29, 2012).

3 This is the case here. DMR's initial protest letter to GSA, and GSA's response to that
4 letter, contains no issues which even remotely hint at the alleged illegalities complained of by the
5 Attorney General. Rather, these proceedings strictly concern an appeal relative to the method of
6 procurement selection, solicitation, or award.

7
8 It would appear at first blush that at least on this narrow point, the Attorney General and
9 the parties are in agreement. In its Supplemental Memorandum, the Attorney General writes
10 that, "*The OPA has ruled that the Public Auditor can only hear appeals which involve matters*
11 *raised earlier and decided in an agency protest, not other matters such as assertion of other*
12 *claims by the Parties in other forums and other jurisdictions which were never raised at the*
13 *agency level.*" [SUPPLEMENTAL MEMORANDUM at p. 8, ll. 13-26].

14 However, in the same breath that he argues the Public Auditor has subject matter
15 jurisdiction "*to hear and decide this procurement only,*"³ the Attorney General goes on to
16 request that the Public Auditor hold a fact finding completely unrelated to the underlying merits
17 of the procurement protest. Specifically, the Attorney General "*suggests*" that GSA carry the
18 burden of proof and be required to provide extrinsic evidence establishing that the Settlement
19 Agreement and Mutual Release and its attached proposed Contract for Services are legal. [Id. at
20 p. 4, ll. 2-5]. Assuming for some reason that GSA is unable to meet this burden, the Attorney
21

22 ³ Id. at p. 8, ll. 6-7.

1 General suggests that it next be given the opportunity to present evidence so that the Public
2 Auditor “*may include such proof of the suspected illegalities in arriving at its decision on the*
3 *merits of this appeal.*” [*Id.* at p. 4, ll. 20-22, p. 5, line 1].

4 This administrative tribunal, however, is not the proper forum for entertaining the
5 Attorney General’s “suspected” but unsubstantiated allegations of collusion and anticompetitive
6 practices, all of which are being raised for the first time. As titillating as such allegations may
7 be, the Public Auditor’s jurisdiction is strictly limited to the issues raised in DMR’s protest letter
8 and GSA’s response thereto. As a matter of law under 5 G.C.A. § 5425(e) and § 5703, evidence
9 of anything else falls beyond the jurisdiction of the Public Auditor. This in turn means that if the
10 “sole purpose” of the Attorney General’s appearance in these proceedings is to debate the
11 legalities of the Settlement Agreement, then the appearance is improper and must be disallowed.
12

13 GSA strongly denies the Attorney General’s allegations that the Settlement Agreement is
14 in any way illegal, collusive, or anticompetitive. To the extent that the Attorney General
15 challenges this position, the proper forum to bring the challenge is elsewhere, and not here in
16 these administrative proceedings.

17 II.

18 **THE PENDING MOTION TO VACATE PROCUREMENT IS** 19 **WITHDRAWN BY GSA BECAUSE IT IS MOOT.**

20 In its Memorandum Supporting Special Entry of Appearance, the Attorney General
21 argues that the *Motion to Dismiss Appeal and Vacate Procurement* that was filed on behalf of the
22 Government of Guam on June 14, 2012 should be decided before any settlement is considered.
23

1 The Attorney General reasons that if the motion is granted, then the underlying procurement
2 would be null and void. If the underlying procurement is null and void, then this appeal would
3 likewise be null and void. And if this appeal is null and void, then there would be nothing to
4 settle, and the Settlement Agreement would itself be a nullity.

5 Based upon its Memorandum, it would appear that the Attorney General fully expects to
6 be given the opportunity to argue and present evidence in support of the Motion to Vacate:

7
8 The Public Auditor has reserved ruling on the motion to vacate
9 procurement pending presentation of evidence by the Attorney
General, which has yet to commence. (Emphasis added).

10 And,

11 [T]he Public Auditor should hold settlement matters in abeyance
12 until it adjudicates the strength of the evidence to be presented in
13 support of the Attorney General's motion to vacate the
procurement. (Emphasis added).

14 MEMORANDUM SUPPORTING SPECIAL ENTRY OF APPEARANCE BY OFFICE OF THE
ATTORNEY GENERAL at p. 3, ¶ 2 and ¶ 5 (OPA Nov. 26, 2012).

15
16 Although the motion to dismiss and vacate was prepared by the Attorney General, it was
17 filed on behalf of the Government of Guam, including DOA and GSA. As the client, the motion
18 therefore belongs to the Government and is not “the Attorney General’s motion.” Moreover,
19 because the Attorney General has withdrawn from representing the Government, he can no
20 longer speak towards the motion, and he certainly cannot appear and argue it on the
21 Government’s behalf.

1 **§ 5425. Authority to Resolve Protested Solicitations and**
2 **Awards.**

3 ***

4 (g) In the event of a timely protest under Subsection (a) of
5 this Section or under Subsection (a) of § 5480 of this Chapter, the
6 Territory shall not proceed further with the solicitation or with the
7 award of the contract prior to final resolution of such protest, and
8 any such further action is void, unless:

9 (1) The Chief Procurement Officer or the Director
10 of Public Works after consultation with and written concurrence of
11 the head of the using or purchasing agency and the Attorney
12 General or designated Deputy Attorney General, makes a written
13 determination that the award of the contract without delay is
14 necessary to protect substantial interests of the Territory; and

15 (2) Absent a declaration of emergency by the
16 Governor, the protestant has been given at least two (2) days notice
17 (exclusive of territorial holidays); and

18 (3) If the protest is pending before the Public
19 Auditor or the Court, the Public Auditor or Court has confirmed
20 such determination, or if no such protest is pending, no protest to
21 the Public Auditor of such determination is filed prior to expiration
22 of the two (2) day period specified in Item (2) of Subsection (g) of
23 this Section.

24 5 G.C.A. § 5425(g). (Emphasis added).

25 The plain language of Section 5425(g) makes it clear that the requirement of concurrence
by the Attorney General and confirmation by the Public Auditor is the exception, not the rule. In
other words, the respective approvals of the Attorney General and the Public Auditor are
intended to be implicated in emergency situations where there has been no final resolution of a

1 protest, yet the substantial interests of the Territory require that a contract be awarded at the
2 soonest.

3 Generally, this generally happens when there are several bidders to procurement and one
4 of the bidders (usually the non-winning bidder) files a protest because he is unhappy with the
5 outcome of the award or the method of solicitation. Because of a pending urgency of some sort,
6 the Territory nevertheless finds it necessary to leap frog over the protest filed by the non-winning
7 bidder and go forward with an award of the contract to the winning bidder.

8
9 The instant case here is completely different. DMR was the only offeror who responded
10 to the RFP. DRM and the Government have now between themselves reached a settlement, that
11 settlement constitutes a “final resolution” of the protest under Section 5425(g). Because a final
12 resolution was reached, it is therefore unnecessary to declare an emergency or to get approval by
13 the Attorney General and the Public Auditor to bypass the pending protest as contemplated by
14 Section 5425(g)(1) through (3).

15 Certainly, it is acknowledged that at least with respect to discontinuance or a dismissal of
16 the protest appeal itself, the Public Auditor’s approval is necessary. [5 G.C.A. § 5708 (after a
17 notice of an appeal is given to the Public Auditor, it cannot be discontinued by the contractor
18 except as authorized by the Public Auditor)]. However, the Public Auditor’s authority is limited
19 to approving the dismissal only as to form. To the extent that there may be legal issues with
20 respect to the terms or other particulars of the settlement, those issues must be dealt with in a
21 court of law, and not within the context of an administrative hearing.
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IV.

THE ATTORNEY GENERAL HAS A CONFLICT OF INTEREST AND IS VIOLATING THE LAW REQUIRING THAT THERE BE A STAY OF PROCUREMENT DURING THE PENDENCY OF A PROTEST

As noted by the Attorney General in its Supplemental Memorandum, Title 5 G.C.A. Section § 5425(g) discussed above requires that in the event of a timely protest, a stay of the procurement automatically goes into effect and the Government is not permitted to proceed with the solicitation or an award until after the protest is resolved. [SUPPLEMENTAL MEMORANDUM at p. 5, ll. 3-12].

Incredibly, shortly after reciting the law governing the automatic stay of procurement, the Attorney General declares without any sworn substantiation that GovGuam has recently developed “its own Point of Sale (POS) system” that allegedly “works fine” and that all that is needed to make this system work between DRT and DOA is a software interface which can be purchased for less than \$15,000 and delivered in less than a month. [SUPPLEMENTAL MEMORANDUM at p. 6, line 19; p. 7, ll. 3-4; and Exhibit D]. The Attorney General represents that it requested DOA and GSA to consider this \$15,000 “deal” and subject it to a fair and reasonable determination, but “this was never done.” [SUPPLEMENTAL MEMORANDUM at p. 6, ll. 4-6]. The “deal” referred to by the Attorney General is attached to the Supplemental Memorandum as Exhibit D, and consists of an allegedly “unsolicited offer” dated a mere four days ago on December 13, 2012.

1 would mean that the Government would no longer need the services that were solicited for in the
2 RFP at issue. [DECLARATION OF ED CAMACHO CRUZ at ¶ 3, ¶ 5 (OPA Dec. 17, 2012)]. Mr.
3 Abrams also said that the deal to get Mr. Littlepage and Mr. Ashe to fix the DOA-DRT interface
4 was to be kept strictly confidential between the parties to the meeting. [Id. at ¶ 6].

5 The \$15,000 cost limit is no coincidence. By keeping the cost of the services to less than
6 \$15,000, the procurement can be styled as a “small purchase procurement” under 5 G.C.A.
7 Section 5213 and 2 G.A.R. Section 3111, thereby avoiding the weary necessity of having to
8 follow Guam Procurement Regulations by putting out a new RFP.

9
10 It is disingenuous for the Attorney General to raise unsubstantiated and unproven
11 suspicions of collusive and anticompetitive practices against GSA and DMR when the evidence
12 clearly establishes that he and his expert witness are engaged in such activities. After being
13 retained as an expert witness and granted privileged access to the government’s AS-400 system,
14 the Attorney General obviously encouraged its expert to use the confidential information gained
15 through this access to prepare the unsolicited offer. The Attorney General then filed the offer in
16 these proceedings, despite the fact that the offer is not addressed to him, but to the Director of
17 DOA.

18
19 The preparation and public filing of a supposedly unsolicited offer prepared with
20 confidential information and then submitted in *the very same appeal the expert was hired to*
21 *review and provide services for*, all while the automatic stay is in place, is compelling evidence
22 of collusion and anticompetitive practices on the part of the Attorney General and his expert.
23 The actions of the Attorney General are illegal and per se violative of Section 5245(g) of the

1 Procurement Law. Moreover, the Attorney General's actions, and specifically the actions of Mr.
2 Abrams, conclusively establishes that an actual conflict of interest exists because that Office is
3 advocating that this protest be resolved in favor of its expert witness gaining a \$15,000 contract.
4 Even assuming for the sake of argument that the "unsolicited offer" was for some reason
5 legitimate, there is no way that it could be accepted because it does not include an offer for all of
6 the comprehensive services solicited by the RFP and is therefore unresponsive.
7

8 CONCLUSION

9 If the Attorney General is allowed to horn in on this appeal, the confusion and complexity
10 level of what should have been a relatively straightforward proceeding will be raised to a fever
11 pitch far beyond the events that have already played. In an effort to cut through the drama, the
12 Government respectfully submits that the issue presently before the Public Auditor is actually
13 quite simple:
14

15 Putting aside the fact that he does not represent a client and his standing herein is
16 questionable, the Attorney General's special entry of appearance into this appeal must be
17 disallowed because admittedly, his sole purpose here is to object to the unproven alleged
18 illegalities that he suspects are contained in the Settlement Agreement negotiated between the
19 parties.

20 As previously discussed *supra*, the Public Auditor does not have jurisdiction to consider
21 and hear evidence of any matters outside of DMR's initial protest letter and GSA's response to
22 that letter. To the extent that the Attorney General decides to address issues not contained in the
23

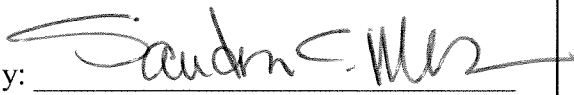
1 protest letter or to challenge the Settlement Agreement, as a matter of law its remedy lies in a
2 different forum before a different tribunal.

3 For all of the reasons set forth herein, it is respectfully submitted that the Office of the
4 Attorney General be DISALLOWED from further participating in these proceedings and that its
5 Special Entry of Appearance filed on November 26, 2012 be DENIED. If approved, the
6 Government of Guam, DOA and GSA request that the Public Auditor STRIKE any and all
7 pleadings filed by the Attorney General since its withdrawal letter dated November 23, 2012.
8

9 Further, the Government of Guam, DOA and GSA respectfully requests that the Order of
10 Dismissal by Stipulation filed on November 28, 2012, be immediately GRANTED. At a
11 minimum, the Government requests that the Public Auditor stay these proceedings pending the
12 filing of litigation in the Superior Court of Guam to address the contract and illegality issues and
13 the ultimate resolution of the same.

14 Dated this 17th day of December, 2012.

15 **OFFICE OF THE GOVERNOR**

16
17 By: 
18 **SANDRA C. MILLER**
19 Legal Counsel
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**CONSULTANT AGREEMENT
BETWEEN THE
OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LAW, GOVERNMENT OF GUAM
AND
JON LITTLEPAGE, D/B/A WORKING SOLUTIONS**

This Agreement (hereinafter "Agreement") is made on the dates indicated below by and between the **OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LAW, GOVERNMENT OF GUAM** (hereinafter "the AGO"), whose address is 287 W. O'Brien Drive, Hagatna, Guam 96910 and **JON LITTLEPAGE, d/b/a Working Solutions** (hereinafter "Consultant"), whose mailing address is P.O. Box 12213, Tamuning, Guam 96931.

WITNESSETH:

WHEREAS, the AGO, on behalf of the Government of Guam (hereinafter "GOVGUAM"), is representing the Department of Administration, GOVGUAM in a procurement appeal before the Office of the Public Auditor, styled: In the Appeal of Data Management Resources, LLC, OPA-PA-007 (hereinafter "Procurement Appeal"), which involves the termination of a custom software design procurement by GOVGUAM and,

WHEREAS, the AGO intends to engage CONSULTANT to provide services to the AGO as an expert witness and consultant in matters of information technology, including point-of-sale ("POS") custom software design in the ongoing Procurement Appeal which is set for a hearing on the merits in July, 2012.

WHEREAS, the services to be rendered by CONSULTANT are of a special and temporary nature which have been determined to be in the best public interest, and therefore performed under a contract by an independent service provider; and

WHEREAS, the AGO is acquiring the services of CONSULTANT as an expert witness and consultant in technical matters related to the Procurement Appeal, through the sole source method of procurement, and has made a written determination accordingly to justify the method; and

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the AGO and CONSULTANT mutually agree as follows:

SECTION 1: SCOPE OF SERVICES

1.1. CONSULTANT shall act as an expert witness and consultant on behalf of GOVGUAM, as represented by the AGO in the Procurement Appeal. As an expert witness and consultant, CONSULTANT shall perform services including:

1.1.1. An independent evaluation of the technical aspects of the Procurement Appeal which may include, but is not limited to, a review of the technical specifications for the solicitation underlying the Procurement Appeal developed by General Services Administration ("GSA") as needed and requested by the AGO that will assist the AGO in preparing for evidentiary hearings in the Procurement Appeal and to testify in those hearings as an expert witness for GOVGUAM.

Exhibit 1

1.1.2. CONSULTANT agrees that he shall not directly or indirectly provide services to any third party in connection with the facts and circumstances underlying the Procurement Appeal without the prior written authorization of the AGO or any appeal therefrom, during the pendency of this Agreement.

1.1.3. All services provided by CONSULTANT to the AGO with respect to the Procurement Appeal are confidential except insofar as CONSULTANT is directed to testify by a court or by the AGO.

SECTION 2: TERM

2.1. The Term of this Agreement shall commence on the date this Agreement is approved by the Governor of Guam and shall terminate upon completion of all services as set out herein, unless sooner terminated in accordance with the provisions of Sections 5 or 6 below.

SECTION 3: COMPENSATION FOR SERVICES AND REIMBURSEMENT

3.1. The AGO shall compensate CONSULTANT as follows:

3.1.1. For the services as set out in subsection 1.1. above, the CONSULTANT shall be paid a fee at the hourly rate of Seventy Dollars and 00/100 (\$70.00).

3.2. The AGO shall approve for payment all undisputed fees and costs, as soon as the documentation can properly be processed in accordance with the usual practice of GOVGUAM, though payment by the AGO will be made to CONSULTANT no later than thirty (30) days after the AGO's receipt of CONSULTANT's invoice.

3.3. Maximum compensation under this Agreement shall not exceed Ten Thousand Dollars and 00/100 (\$10,000.00).

3.4. Compensation and reimbursement provided under this Section 3 constitutes full and complete payment for all costs and expenses incurred or assumed by CONSULTANT in performing this Agreement. No other costs, expenses or overhead items shall be reimbursed by the AGO without the prior written approval of the AGO.

SECTION 4: INDEPENDENT AGENT

4.1. CONSULTANT contracts herein with the AGO as an independent contractor and understands that he is not an employee of the AGO for the purposes of performing the services hereunder.

4.2. CONSULTANT shall not be entitled to employee benefits provided to GOVGUAM employees such as health or life insurance, retirement benefits, vacation leave or sick leave, and there shall be no withholding of taxes by the AGO.

4.3. CONSULTANT assumes full responsibility for the payment of all contributions, taxes, or assessments, territorial or federal, and further agrees to meet all requirements that may be specified under regulations of administrative officials or bodies charged with enforcement of any territorial or federal laws on this subject.

SECTION 5: TERMINATION OF AGREEMENT BY THE AGO

5.1. The AGO, by written notice, may immediately suspend, postpone, abandon, or terminate this Agreement at any time and for any reason or no reason, including convenience, and such action shall in no event be deemed a breach of contract.

5.2. Upon receipt of written notification from the AGO of termination, CONSULTANT shall immediately cease to perform the services described hereunder unless otherwise directed by the AGO. CONSULTANT shall assemble all material that has been prepared, developed, furnished, or obtained under the terms of this Agreement, in electronic, magnetic, paper or any other form, that may be in its possession or custody, and shall transmit the same to the AGO as soon as possible, and no later than thirty (30) days following the receipt of the above written notice of termination, together with a description of the cost of the services performed to the date of termination.

SECTION 6: TERMINATION OF AGREEMENT BY CONSULTANT

6.1. CONSULTANT, on thirty (30) days written notice to the AGO, may terminate this Agreement.

6.2. On the effective date of the termination, CONSULTANT shall immediately cease to perform the services described hereunder. CONSULTANT shall assemble all the material that has been prepared, developed, furnished, or obtained under the terms of this Agreement, in electronic, magnetic, paper or any other form, that may be in its possession or custody, and shall deliver the same to the AGO on or before the fifteenth day following the transmittal of the written notice of termination, together with a description of the cost of the services performed to the date of termination.

SECTION 7: TIME OF PERFORMANCE

7.1. CONSULTANT shall perform the services described hereunder at such times and in such sequence as may be reasonably directed by the AGO.

7.2. This Agreement will run from its effective date until the tasks set forth in Section 1 of this Agreement are performed or completed to the satisfaction of the AGO, or unless sooner terminated in accordance with Sections 5 or 6 of this Agreement.

SECTION 8: CLAIMS AGAINST GOVGUAM

8.1. CONSULTANT expressly recognizes that the Government Claims Act (Title 5 Guam Code Annotated, Chapter 6) applies with respect only to claims of money owed by or to CONSULTANT against the AGO if the claim arises out of or in connection with this Agreement. CONSULTANT also expressly recognizes that all other claims by CONSULTANT against the AGO are subject to the Guam Procurement Law (Title 5 Guam Code Annotated, Chapter 5 and Title 2 Guam Administrative Rules and Regulations).

SECTION 9: MANDATORY REPRESENTATIONS BY CONSULTANT

9.1. With respect to this Agreement and any other contract that CONSULTANT may have, or wish to enter into, with any GOVGUAM agency, CONSULTANT represents that he has not knowingly influenced, and promises that he will not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement regulations.

9.2. With respect to this Agreement and any other contract that CONSULTANT may have or wish to enter into with any Government of Guam agency, CONSULTANT represents that he has not violated, is not violating, and promises that he will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.

9.3. CONSULTANT represents that he has not retained any person or agency upon an agreement or understanding for a percentage, commission, brokerage, or other contingent arrangement, except for retention of bona fide employees or bona fide established commercial selling agencies, to solicit or secure this Agreement or any other contract with the GOVGUAM or its agencies.

9.4. CONSULTANT warrants that no person, if any, in his employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of CONSULTANT relative to this Agreement. If any person employed by CONSULTANT and providing services under this Agreement is convicted subsequent to the Parties entering into this Agreement, then CONSULTANT warrants that he will notify the AGO of the conviction within twenty-four (24) hours of conviction, and will immediately remove such convicted person from providing services under this Agreement. If CONSULTANT is found to be in violation of any of the provisions of this paragraph, then the AGO shall give notice to CONSULTANT to take corrective action. CONSULTANT shall then take corrective action within twenty-four (24) hours of notice from the AGO, and CONSULTANT shall notify the AGO when action has been taken. If CONSULTANT fails to take corrective steps within twenty-four (24) hours of notice from the AGO, then the AGO in its sole discretion may suspend this Agreement.

SECTION 10: INDEMNIFICATION

10.1. CONSULTANT shall indemnify, defend and hold harmless the AGO and its successors and assigns from and against all actions (pending or threatened and whether at law or in equity in any forum), liabilities, damages, losses, costs and expenses, including but not limited to reasonable attorneys' and other professionals' fees, resulting from (i) misconduct or negligent or wrongful acts (whether of commission or omission) of CONSULTANT or any of his representatives, agents, servants, employees or other persons or entities under the supervision or control of CONSULTANT while rendering professional services to the AGO under this Agreement, or (ii) any breach or non-performance by CONSULTANT of any representation, warranty, duty or obligation of CONSULTANT under this Agreement. This indemnity shall not be limited by reason of any insurance coverage required of CONSULTANT. The AGO shall provide timely notice to CONSULTANT of any such pending action.

SECTION 11: CHANGES TO THIS AGREEMENT

11.1. Any and all amendments, changes, extensions, revisions or discharges of this Agreement, in whole or in part, on one or more occasions, shall not be invalid or unenforceable because of lack or insufficiency of consideration, provided, however, that such amendments, extensions, revisions, or discharges are in writing and executed by all the Parties to this Agreement.

SECTION 12: MISCELLANEOUS

12.1. This Agreement, its terms and conditions and actions arising therefrom shall be governed by Guam law and Guam court decisions. Any dispute arising out of this Agreement shall be subject to the exclusive jurisdiction of the courts of Guam and CONSULTANT hereby waives any objection which he

may now or hereafter have to the laying of venue of any actions in any forum and further irrevocably submits to the jurisdiction of any of the courts of Guam in any actions.

12.2. The Parties each bind themselves, their partners, successors, assigns, and legal representatives with respect to all covenants of this Agreement.

12.3. This Agreement incorporates all the understandings of the Parties and supersedes any all agreements reached by the Parties prior to the effective date of this Agreement, whether oral or written, and no alteration, modification or interpretation of this Agreement shall be binding unless in writing and duly executed by the Parties.

12.4. If any provision of this Agreement, or application to any party or circumstances, is held invalid by any court of competent jurisdiction, the balance of the provisions of this Agreement, or their application to any party or circumstances, shall not be affected, but only if the balance of the provisions of this Agreement would then continue to conform to the requirements of applicable laws.

12.5. The waiver of a term or condition by the AGO shall not (i) entitle CONSULTANT to any future waivers of the same or different terms or conditions; (ii) impose any duties, obligations or responsibilities on the AGO or any department of GOVGUAM, including the AGO; or (iii) subject the AGO or GOVGUAM or any department or agency thereof to any actions.

12.6. References in the feminine gender shall also be construed to apply to the masculine and neuter genders, as the content requires.

12.7. Nothing in this Agreement shall be construed as a waiver or limitation of the sovereign immunity by GOVGUAM or the AGO.

12.8. Any notice required or permitted to be given under this Agreement shall be deemed to be given when hand delivered or on (1) business day after pickup by any commercial delivery service including the USPS, in either case addressed to the Parties below:

If to **CONSULTANT**:

JON LITTLEPAGE
WORKING SOLUTIONS
P.O. BOX 12213
TAMUNING, GU 96931

If to the **AGO**:

BENJAMIN M. ABRAMS
ASSISTANT ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
6TH FL. CIVIL DIVISION
287 W.O'BRIEN DR.
HAGATNA, GU 96932

With a copy to:

Office of the Attorney General
Civil Solicitor Division
J. Patrick Mason, Deputy Attorney General
287 West O'Brien Drive
Hagatna, Guam 96932

or in each case to such other person and/or address as either party may from time to time designate by giving notice in writing to the other party.

12.9. The captions in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope of content of any of its provisions.


12.10. Time is of the essence in this Agreement.


12.11. This Agreement is non-assignable by either party without the prior written consent of the other party.

IN WITNESS WHEREOF, the Parties have entered into this agreement on this ___ day of May 2012.

OFFICE OF THE ATTORNEY GENERAL

CONSULTANT

By: 
Leonardo M. Rapadas
Attorney General of Guam

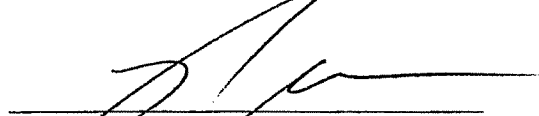
By: 
Jon Littlepage
d/b/a Working Solutions

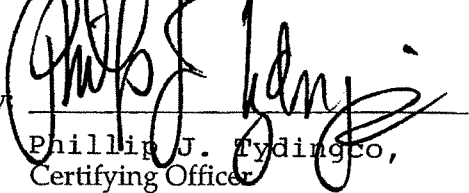
Date: 5/31/12

Date: 5/30/12

APPROVED AS TO FORM AND LEGALITY:

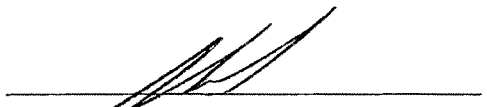
CERTIFIED FUNDS AVAILABLE:

By: 
Leonardo M. Rapadas
Attorney General of Guam

By: 
Phillip J. Tydingco,
Certifying Officer

APPROVED:

Contract No. _____
Account No. 5100A121100GA001-230
Document No. C121100013
Vendor No. W0011079
Amount No. \$10,000.00
Certification Period 10/1/11-9/30/12

By: 
Hon. Edward B. Calvo
Governor of Guam
Date: 7/10/12