

1 Jacqueline Taitano Terlaje  
2 LAW OFFICE OF JACQUELINE TAITANO TERLAJE, P.C.  
3 250 Route 4  
4 Suite 204, Nanbo Guahan 250 Building  
5 Hagåtña, Guam 96910  
6 Telephone 671.648.9001  
7 Facsimile 671.648.9002  
8 Email: info@terlajelaw.com

9 Attorneys for Petitioner  
10 *Data Management Resources, LLC.*

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 10/10/12  
TIME: 243  AM  PM BY: NH  
FILE NO OPA-PA: 12-007

11 THE OFFICE OF PUBLIC ACCOUNTABILITY – GUAM  
12 HAGÁTÑA, GUAM

13 In the Appeal of ) DOCKET NUMBER. OPA-PA-12-007  
14 )  
15 DATA MANAGEMENT RESOURCES, LLC, ) APPELLANT'S MOTION FOR PROTECTIVE  
16 ) ORDER AND TO QUASH SUBPOENA DUCES  
17 ) TECUM  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )  
Appellant.

COMES NOW Appellant, DATA MANAGEMENT RESOURCES, LLC. ("DMR"), through undersigned counsel and moves the Office of Public Accountability to issue a Protective Order and Order to Quash Subpoena Duces Tecum issued by the Office of the Attorney General for Richard S. Taitano and Richard C. Taitano. The Subpoenas Duces Tecum are defective, as a matter of law, and sanctions should be imposed against the Office of the Attorney General. This Motion is based on the Memorandum of Points and Authorities herein, and on any further evidence presented at hearing thereon.

**ORIGINAL**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**PROCEDURAL AND FACTUAL BACKGROUND**

This appeal involves the General Services Agency (GSA) Request for Proposal No. RFP/DOA-014-11 Point of Sale (hereinafter "RFP") for a "Turn-Key" project to design, develop and implement a point-of-sale system which fully integrates payment processing for all Treasurer of Guam transactions. The RFP was issued by GSA on behalf of Department of Administration (DOA), Department of Revenue and Taxation (DRT) and departments of the Government of Guam. Agency Report, Tab. 5, ¶1.2 of RFP. The Protest by Appellant involves the arbitrary termination by GSA and/or the Evaluation Committee of cost negotiations.

On October 8, 2012, the Office of the Attorney General purported to serve two (2) Subpoenas Duces Tecum on the Law Office of Jacqueline Taitano Terlaje, P.C. commanding the appearance of Richard C. Taitano and Richard S. Taitano on October 22, 2012. Attached hereto are the true and correct copies of the Subpoenas Duces Tecum marked as Exhibits 1 and 2.

**LEGAL ARGUMENT**

Generally, the Office of Public Accountability is granted authority to issue subpoenas for the attendance and production of documents by Government of Guam employees. 5 GCA § 5703 provides in part:

The Public Auditor shall have the power to compel attendance and testimony of, and production of documents by any employee of the government of Guam, including any employee of any autonomous agency or public corporation.

The Office of Public Accountability Rules of Procedure for Procurement Appeals, § 12108(d) provides:

Where not otherwise provided for by these rules and regulations or statute, and where not inconsistent herewith, hearings shall be conducted in accordance with the Administrative Adjudication Law in Chapter 9 of Title 5, Guam Code Annotated, including those provisions on subpoenas and contempt.

1 2 GAR Div. 4, Ch. 12, § 12108(d). The Administrative Adjudication act further provides, “Before the  
2 hearing has commenced the agency shall issue subpoenas and subpoenas duces tecum at the request of any  
3 party in accordance with the provisions of §1985 of the Code of Civil Procedure.” 5 GCA §9217(a).  
4

5 **I. THE SUBPOENAS DUCES TECUM ARE DEFECTIVE FOR FAILURE**  
6 **TO SEEK APPLICATION AND ISSUANCE FROM THE HEARING**  
7 **OFFICER.**

8 On August 9, 2012, the Hearing Officer issued a Notice of Rescheduled Hearing. The Hearing  
9 Officer ordered that the Parties are entitled to the issuance of subpoenas by application. Prior to the  
10 issuance of Exhibits 1 and 2, the Office of the Attorney General failed to submit any application for the  
11 issuance of subpoenas. *See* Documents filed, [www.guamopa.com](http://www.guamopa.com), OPA-PA-12-007. In this administrative  
12 hearing, the Office of the Attorney General does not have the authority to independently and without the  
13 consent and approval of the Hearing Officer to issue subpoenas or subpoenas duces tecum. Thus, the  
14 Subpoenas Duces Tecum, while defective for failure of personal service, is defective because there is no  
15 authority of law granted to the Office of the Attorney General to issue any form of subpoena in this  
16 administrative proceeding.  
17

18 **I. SUBPOENA DUCES TECUM FOR PRIVATE PARTY ATTENDANCE**  
19 **AND PRODUCTION OF RECORDS IS NOT AUTHORIZED BY LAW**

20 5 GCA § 5703 specifically limits the scope of parties subject to subpoena in procurement appeal  
21 proceedings. No authority is conferred on either the Office of Public Accountability or the Office of the  
22 Attorney General to issue a subpoena to require a private party to either appear, testify or otherwise produce  
23 documents. *Id.* The Office of Public Accountability Rules of Procedure for Procurement Appeals, §  
24 12109(i) also sets forth the limitations of the powers of subpoena; it provides:  
25  
26  
27  
28

1 (i) Compel attendance and testimony of and production of documents  
2 by any employee of the government of Guam, including any  
3 employee of any autonomous agency, public corporation or board or  
4 commission;

5 2 GAR Div. 4, Ch. 12, § 12109(i). As set forth in § 12109(h), appropriate sanctions may be imposed against  
6 the Office of the Attorney General for failure to comply with the Rules of Procedure for Procurement  
7 Appeals. Appellant submits that the appropriate sanction herein should be the imposition of costs and  
8 attorney's fees related to this motion. § 12109(h).

9 **CONCLUSION**

10 BASED ON THE FOREGOING, Appellant seeks a Protective Order and Order to Quash the  
11 Subpoenas issued by the Office of the Attorney General to command the appearance and production of  
12 documents by Richard C. Taitano and Richard S. Taitano.

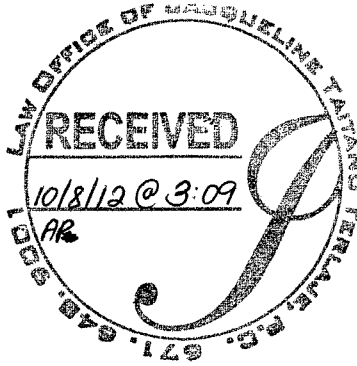
13 RESPECTFULLY SUBMITTED on this 10<sup>th</sup> day of October, 2012.

14  
15 **LAW OFFICE OF**  
16 **JACQUELINE TAITANO TERLAJE, P.C.**

17  
18 By:   
19 **JACQUELINE TAITANO TERLAJE**  
20 Attorney for Appellant



**Office of the Attorney General**  
**Leonardo M. Rapadas**  
 Attorney General of Guam  
 Civil Division  
 287 West O'Brien Drive  
 Hagåtña, Guam 96910 • USA  
 (671) 475-3324 • (671) 472-2493 (Fax)  
 www.guamattorneygeneral.com



Attorneys for the General Services Agency

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
 PROCUREMENT APPEAL**

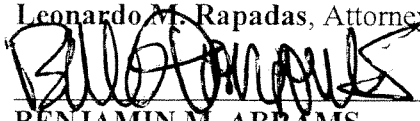
IN THE APPEAL OF	)	DOCKET NO. OPA-PA-12-007
	)	
DATA MANAGEMENT RESOURCES, LLC.)	)	
	)	
Appellant.	)	<b>SUBPOENA DUCES TECUM</b>

**THE PEOPLE OF GUAM:**

**TO: RICHARD C. TAITANO**  
 Data Management Resources, LLC  
 284 W. Chalan Santo Papa  
 Hagatna, Guam 96910

**YOU ARE HEREBY COMMANDED** to appear in the hearing room of the Office of Public Accountability, on the 9<sup>th</sup> Floor of the DNA/Pacific Daily News Bldg., Hagatna, Guam 96910 on **October 22, 2012 at 9:00 a.m.** and to bring with you copies of your cell phone(s) record between October 2010 and September 2012.

Dated: 5 October 2012

OFFICE OF THE ATTORNEY GENERAL  
 Leonardo M. Rapadas, Attorney General  
 By:   
**BENJAMIN M. ABRAMS**  
 Assistant Attorney General


I served this Subpoena Duces Tecum by delivering a copy thereof to the following person personally:

Name of Person Served	Address Where Served	Date and Time of Service
Richard C. Taitano	Law Offices of	10/08/12 @ 3:09pm
Adene S. Perez (arg)	Jacqueline Terlaje Hagåtña, Guam	10/08/12 @ 3:09pm

I declare under penalty that the foregoing is true and correct.

Dated: 10/08/12

OFFICE OF THE ATTORNEY GENERAL  
Leonardo M. Rapadas, ATTORNEY GENERAL

By:   
ALISA MUNOZ, Process Officer I  
SP0248-10

Pursuant to the Guam Rules of Civil Procedure, Rule 45(a)(1)(D), you are advised of the following:

**Protection of Persons Subject to Subpoena.**

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all the of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitle to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order

to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iii) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

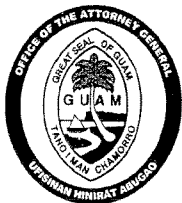
#### **Duties in Responding to Subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

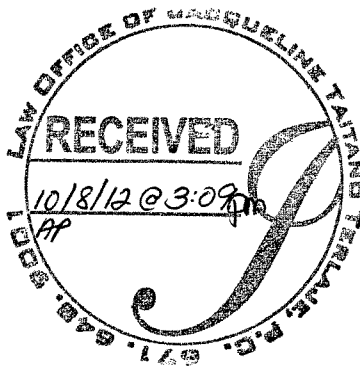
(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed in contempt of the court from which the subpoena issued.



**Office of the Attorney General**  
**Leonardo M. Rapadas**  
 Attorney General of Guam  
 Civil Division  
 287 West O'Brien Drive  
 Hagåtña, Guam 96910 • USA  
 (671) 475-3324 • (671) 472-2493 (Fax)  
 www.guamattorneygeneral.com



Attorneys for the General Services Agency

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
 PROCUREMENT APPEAL**

IN THE APPEAL OF	)	DOCKET NO. OPA-PA-12-007
	)	
DATA MANAGEMENT RESOURCES, LLC.)	)	
	)	
Appellant.	)	<b>SUBPOENA DUCES TECUM</b>

**THE PEOPLE OF GUAM:**

**TO: RICHARD S. TAITANO**  
 Data Management Resources, LLC  
 284 W. Chalan Santo Papa  
 Hagatna, Guam 96910

**YOU ARE HEREBY COMMANDED** to appear in the hearing room of the Office of Public Accountability, on the 9<sup>th</sup> Floor of the DNA/Pacific Daily News Bldg., Hagatna, Guam 96910 on **October 22, 2012 at 9:00 a.m.** and to bring with you copies of your cell phone(s) record between October 2010 and September 2012.

Dated: 5 October 2012

OFFICE OF THE ATTORNEY GENERAL  
 Leonardo M. Rapadas, Attorney General  
 By: *Benjamin M. Abrams*  
**BENJAMIN M. ABRAMS**  
 Assistant Attorney General



I served this Subpoena Duces Tecum by delivering a copy thereof to the following person personally:

Name of Person Served	Address Where Served	Date and Time of Service
<u>Richard S. Taitano</u>	<u>Law Offices of</u>	<u>10/08/12 @ 3:00pm</u>
<u>Arlene S. Perez</u>	<u>Jaqueline Terate</u>	<u>10/08/12 @ 3:00pm</u>
	<u>Hagatna, Guam</u>	

I declare under penalty that the foregoing is true and correct.

Dated: 10/08/12

OFFICE OF THE ATTORNEY GENERAL  
Leonardo M. Rapadas, ATTORNEY GENERAL

By: Alisa Munoz  
ALISA MUNOZ, Process Officer I  
SP0248-10

Pursuant to the Guam Rules of Civil Procedure, Rule 45(a)(1)(D), you are advised of the following:

**Protection of Persons Subject to Subpoena.**

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all the of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitle to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order

to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

- (3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:
- (i) fails to allow reasonable time for compliance; or
  - (ii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
  - (iii) subjects a person to undue burden.
- (B) If a subpoena
- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
  - (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### **Duties in Responding to Subpoena.**

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed in contempt of the court from which the subpoena issued.