



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

RECEIVED  
 OFFICE OF PUBLIC ACCOUNTABILITY  
 PROCUREMENT APPEALS  
 JUN 14 2012  
 TIME 4:00pm BY OPAR  
 FILE NO. OPA-PA- 12-007

Attorneys for the Government of Guam

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

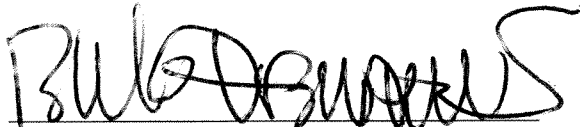
IN THE APPEAL OF	)	DOCKET NO. OPA-PA-12-007
	)	
	)	
	)	
DATA MANAGEMENT RESOURCES, LLC.	)	<b>NOTICE OF MOTION AND    VERIFIED MOTION TO DISMISS    APPEAL AND TO VACATE    PROCUREMENT</b>
Appellant.	)	
	)	

**NOTICE OF MOTION**

TO: JACQUELINE TAITANO TERLAJE, ESQ., Law Office of Jacqueline Taitano  
 Terlaje, P.C., 250 Route 4, #204 Nanbo Guahan Bldg., Hagatna, Guam 96910

PLEASE TAKE NOTICE, that on the \_\_\_ day of July, 2012, at the hour of \_\_ o'clock,  
 \_\_.m. or as soon thereafter as the matter can be heard, by the Office of Public  
 Accountability, Suite 401 DNA Building, 238 Archbishop Flores St, Hagatna, the  
 Government of Guam shall move for Dismissal of the Appeal herein and to Vacate  
 the Procurement on the basis of testimony and evidence adduced in support thereof..

Dated, this 14<sup>th</sup> day of June, 2012.

  
 Benjamin M. Abrams  
 Assistant Attorney General

**ORIGINAL**

## MOTION

The Government of Guam (“GovGuam”), Department of Administration (“DOA”), including Guam Services Administration (“GSA”) represented by the undersigned legal counsel pursuant to 5 GCA §5150, herewith moves to:

1. Dismiss the procurement appeal herein on grounds including *inter alia*:

(a) failure of funds to materialize for procurement cost coverage, with resulting cancellation of the procurement based on the statutory requirement for government spending to be supported by an appropriation (see FY 2012 Budget Act, 5 GCA §22401; 2 GAR, Div. 4, §3115(d)(2)(A)(iv) Procurement Regulations and 5 GCA §5225 which authorize GSA to cancel a procurement). This cancellation authority is also reflected in ¶1.3.5 of Point of Sale System (POS) RFP/DOA-014-11.

(b) violation of the Guam Procurement Law, including but not limited to, 5 GCA §§5001(b)(3-8) by Appellant improperly restricting maximum competition, manipulating access to bid documentation and Appellant’s direct and continuous access to confidential and sensitive GovGuam data relevant to this procurement for more than the last two years, so as to place any potential bidder(s) at unnecessary competitive disadvantage.

2. Vacate the Procurement *ab initio* based upon improper restriction of maximum competition, manipulation of access to bid documentation for prospective bidders by Appellant; Appellant’s direct and continuous access to confidential and sensitive GovGuam data relevant to this procurement for more than the last two years so as to place any potential bidder(s) at unnecessary competitive disadvantage, all in violation of the Guam Procurement Law, including but not limited to 5 GCA §§5001(b)(3-8).

As factual grounds supporting this motion, GovGuam alleges:

**I. DISMISSAL OF APPEAL**

**a. Lack of Funds**

1. This solicitation, RFP/DOA-014-11, was intended to procure the design, development and implementation of a Point-of-Sale fully integrated payment processing system for all Treasurer of Guam transactions.
2. The initial stages of planning for RFP/DOA-014-11 took place prior to January 3, 2011, under the former administration of Governor Felix P. Camacho, but the final planning and then the initiation of this solicitation took place in early 2011.
3. This solicitation, RFP/DOA-014-11, was assigned to the GSA, a Division of the Department of Administration, under Ms. Claudia Acfalle, Chief Procurement Officer.
4. At all times during this solicitation, there was never more than Three Hundred and Eighty-Three Thousand, Four Hundred Eighty-Three Dollars, and Eighty-Eight Cents (\$383,483.88) available to cover this procurement.
5. Despite the possibility of identifying additional funding availability, as of January 2012 no funds other than Three Hundred and Eighty-Three Thousand, Four Hundred Eighty-Three Dollars, and Eighty-Eight Cents (\$383,483.88) ever became available for the solicitation of the Point-of-Sale payment processing system.
6. A Two Million, Two Hundred Ninety-Five Thousand, Five Hundred Eighty-Two Dollar, and Sixty-Nine Cent (\$2,295,582.69) "First Counter Offer" was made by the Chief Procurement Officer to Appellant on 28 September 2011, but not brought to the attention of the Director of Administration until 10 May 2012 and is still unexplained. The basis for this errant First Counter Offer and whether there was any collusion

between Appellant and the Chief Procurement Officer with respect to it, remains under active investigation.

**b. Maximum competition restriction, and unnecessary competitive disadvantage in the procurement process.**

7. On 12 April 2011, at the Mandatory Pre-bid Conference, a prospective bidder, Bank of Guam asked for certain baseline security code information in order for them to develop a competitive bid in this Procurement. The response to this request by both the Chief Procurement Officer and Appellant was that no disclosure of the sought material could be made as Appellant retained a proprietary interest protected by contract. In fact, such refusal was not only unsupported by any binding contract in existence at the time, but such exclusion in any case is void against public policy the data in question being fundamentally critical to the competitive procurement process.
8. During a period exceeding the last two years, Appellant, without any apparent authorization by GovGuam, took it upon itself to lay an underground short haul fiber optic cable between its Hagatna headquarters at 284 W. Chalan Santo Papa and the GovGuam central data facility two blocks away, next to the Guam Police Department. This very high bandwidth (gigabit velocity) glass fiber cable provides Appellant ultra high speed data transmission and continuous uncontrolled, unrestricted “carte blanche” access to the GovGuam data center, enabling Appellant to read and copy<sup>I/</sup> nearly all GovGuam line Agency data including stored finance balances, accounts, communications,

---

<sup>I/</sup> and, we are reliably informed, to move, manipulate, alter, delete and otherwise edit vital, confidential and sensitive GovGuam data, digital records, accounts, etc.

contracts, purchase orders and payment records. This 24/7 open access to GovGuam's central data, among other things, completely prevents a level playing field in this procurement and renders it totally non-competitive.

## II. VACATE PROCUREMENT

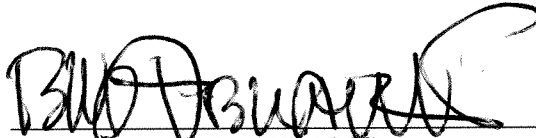
9. GovGuam re-alleges ¶¶7 and 8 hereinabove as though fully set forth herein.

10. The deprivation by Appellant and GSA of data vital to formulation of a procurement bid by potential bidder Bank of Guam, leaving only Appellant in possession of such critical information, and, the open, continuous access to the GovGuam main data base by Appellant renders this Procurement fatally defective in contravention of not only 5 GCA §§5001(b)(3-8) but also 5 GCA §5626 (a) and (b).

Dated, this 14<sup>th</sup> day of June 2012.

OFFICE OF THE ATTORNEY GENERAL  
**Lenny M. Rapadas, Attorney General**


By:

  
BENJAMIN M. ABRAMS  
Assistant Attorney General

## VERIFICATION

I, FELIX MANGLONA, hereby declare upon penalty of perjury, that based upon my investigation of the matters contained in the foregoing Motion to Dismiss Appeal and to Vacate Procurement, that I am familiar with the facts contained therein and believe them to be true and correct to the best of my knowledge and information.

Dated, this 14<sup>th</sup> day of June 2012.

  
FELIX MANGLONA, Investigator III  
Office of the Attorney General, Civil Division

page 5 of 5 pages