



OFFICE OF THE PUBLIC AUDITOR

RECEIVED  
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PROCUREMENT APPEALS

Appendix A: Notice of Appeal Form  
PROCUREMENT APPEAL

MAY 30 2008

TIME: 2:10 PM  
BY: I. Cynabao/ao  
FILE No. OPA-PA-08-008

PART I- To be completed by OPA

In the Appeal of )

NOTICE OF APPEAL

LATTE TREATMENT CENTER  
(Name of Company), APPELLANT )

Docket No. OPA-PA-08-008

PART II- Appellant Information

Name: LATTE TREATMENT CENTER

Mailing Address: PMB- 377-G 415 CHALAN SAN ANTONIO  
TAMUNING GU

Business Address: \_\_\_\_\_

Daytime Contact No: 777-1144

PART III- Appeal Information

A) Purchasing Agency: \_\_\_\_\_

B) Identification/Number of Procurement, Solicitation, or Contract: RFP/DMHSA 014-08

C) Decision being appealed was made on 15 MAY (date) by:

\_\_\_ Chief Procurement Officer \_\_\_ Director of Public Works  Head of Purchasing Agency  
VIA OFFICE OF ATTORNEY GENERAL

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

D) Appeal is made from:

(Please select one and attach a copy of the Decision to this form)

Decision on Protest of Method, Solicitation or Award

\_\_\_ Decision on Debarment or Suspension

\_\_\_ Decision on Contract or Breach of Contract Controversy

(Excluding claims of money owed to or by the government)

\_\_\_ Determination on Award not Stayed Pending Protest or Appeal

(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

( DR. ZACHEM,  
ASSOCIATES IN CLINICAL  
PSYCHOLOGY

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**PART IV- Form and Filing**

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

*Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.*


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**PART V- Declaration Re Court Action**

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 30 day of MAY, 2008.

  
By: LUIS VALDES  
APPELLANT

or

By: \_\_\_\_\_  
Appellant's Duly Authorized Representative  
(Address)  
(Phone No.)

APPENDIX A

**Latte Treatment Center, LLC**  
308 Fr. Duenas Drive Tamuning, Guam 96913  
Phone 671-475-5390 Fax 671-475-5392

RECEIVED  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

To: Ms. Doris Flores-Brooks  
Guam Public Auditor  
PNB Archbishop (Ext. 201)  
238 Archbishop Flores Street  
Hagatna, Guam 96910

MAY 30 2008  
TIME: 2:10 PM  
BY: J. C. Mata  
FILE No. GPA-PA - 08-008

Re: **Letter of Appeal on the Notice of Protest Decision**

Dear Madame Public Auditor,

Please be advised that the Latte Treatment Center filed a letter of protest pursuant to Chapter 5 of the Guam Procurement Law and Chapter 3 Source Selection and Contract Formation regarding RFP/DMHSASA 014-08, as shown in the letter to DMHSA, dated 21 December 2007 (Attachment 1). Also be advised that the Attorney General's Office issued a decision on the protest, as shown in the letter, dated 15 May 2008 (Attachment 2).


Pursuant to Chapter 5 of the Guam Procurement Law, Article 9, § 5425, Authority to Resolve Protested Solicitations and Awards, the Latte Treatment Center hereby files an appeal to the notice of protest decision. Please find Latte's response to the AAG's comments at Attachment 3, in highlighted and bold print.

The following supporting documents are also attached:

- Attachment 4 – Original Latte Treatment Center and DMHSA Contract
- Attachment 5 – Letter of Intent

As you will find in the attached documentation, there have been *numerous* irregularities that have led the Latte Treatment Center to file a protest. In Latte's opinion, the RFP process as required by procurement law and regulations was significantly flawed, as explained in Attachment 3. Therefore, Latte is submitting this appeal since it is not satisfied with the protest decision, and is, therefore, seeking a decision from the Public Auditor. If you have any questions, please contact me at 1-713-854-8731 or Eddy Reyes, Administrator, Latte Treatment Center at 777-1144.

I look forward to mutual resolution of the subject matter.

Sincerely,  
  
Luis A. Valdes, PhD  
Executive Director

**Attachment 1**  
**Latte Treatment Letter to DMHSA**  
**21 December 2007**

**Latte Treatment Center, LLC**  
308 Fr. Duenas Drive Tamuning, Guam 96913  
Phone 671-475-5390 Fax 671-475-5392

Andrea Leitheiser, PhD  
Acting Director  
790 Gov Carlos C. Camacho Rd  
Tamuning, Guam 96913

Re: TGH RFP

Date: 12/21/07

Dear Dr. Leitheiser:

I am turning over all matters and correspondence related to this protest to Dr. Luis Valdes, President of Latte Treatment Center. Please complete all correspondence to him as my representative from this point forward.

Pursuant to Chapter 5 of the Guam Procurement Law and Chapter 3 Source Selection and Contract Formation I am officially protesting the procurement process for RFP/DMHSASA 014-08.

Latte Treatment Center is asking for a thorough investigation of the procurement process by an entity other than DMHSA. Latte has experienced numerous irregularities and many more have been reported.

1. I am asking for copies of all documentation and data related to this RFP process pursuant to all applicable Guam laws, rules and regulations to be forwarded to the above address as soon as possible. This request includes documentation and data from all previous RFPs that have been part of this process.
2. Pursuant to the rules of protest there is much to be reviewed that cannot be reasonably ascertained within the 14 day limit on the initiation of this protest. Therefore, Latte reserves the right to submit further evidence and information as it comes available within 30 days from receipt of the above requested information.
3. Latte is requesting why the original multi-year contract (i.e. through 2009) was not renewed if funding was available for a new contract and contract negotiations were initiated on the Amendment to the contract.
4. Latte is requesting an explanation why the department is seeking to change vendors when there have been no citations for below standard performance of Latte.
5. Latte is requesting specific details as to why Latte was declined in each of the first 4 RFPs, as no explanation was provided by DMHSA, as required by Guam Procurement Law

6. Latte is requesting why multiple RFPs were issued until Zackheim finally won.
7. Latte is requesting why an RFP was re-issued, when Zackheim responded to the wrong RFP.
8. Latte is requesting an explanation of Zackheim's admission of paying for a trip of DMHSA staff.
9. Latte is requesting confirmation that the concerned DMHSA staff, who took a paid trip to Zackheim's facility, did *not* participate in any review panel for the responses to the RFPs.
10. Latte is requesting to know why RFP language was modified to specifically address the sexual assault/misconduct allegations of the other bidder.
11. Latte is requesting to know why RFP language was altered to increasingly exclude Latte, particularly on the basis of erroneous information regarding Dr. Valdes' license and service provision status.
12. Latte is requesting whether it is lawful practice to modify information in a subsequent RFP with information gained from previous RFPs, which would create an advantage of one bidder over the other, as was done in this case.
13. Latte is requesting to know why it repeatedly stated that there was no money to pay Latte, then continued to use the Latte services and then suddenly did have money to pay Latte when there was a court order to do so.

**Further basis of the protest is:**

1. DMHSA failed to respond to repeated requests for information throughout this procurement process as required by procurement law.
2. DMHSA acted on and promulgated misinformation about Dr. Valdes without attempting to contact him. Information that Dr. Valdes received from the DMHSA Acting Director was knowingly erroneous. Dr. Valdes alerted DMHSA to the error but the inquisition was not stopped.
3. DMHSA repeatedly disqualified Latte Treatment Center without giving reason as required by procurement law.
4. DMHSA caused a restriction of trade for Latte by knowingly refusing to process invoices and making limited efforts to secure payment to Latte with full knowledge of the financial crisis it was creating for Latte.
5. DMHSA's nonpayment caused a restriction of trade by knowingly crippling Latte's ability to give a full response to repeated RFPs.

6. DMHSA knowingly and neglectfully did not complete the amendment to its contract with Latte with no indication as to why, yet, continuing to use the service, demanding full compliance with the contract and not paying for the service.
7. DMHSA created and promulgated the misinformation that Latte and DMHSA did not have a contractual agreement. This misinformation led to the issuance of the original RFP and its following revisions four months prior to the end of the contract year and with no indication as to why it was not exercising the renewal option on the contract. Yet, DMHSA continued to make referrals to Latte, demanded compliance with the terms of the contract and did not pay for the service.
8. DMHSA illegally courted the off island provider with the purpose of eliminating Latte Treatment Center. No complaint has ever been filed against Latte's provision of service. To the contrary, all related agencies can attest to Latte's quality of care (e.g., GPSS, CPS, Superior Court of Guam, DYA, Project I'Famaguota and the Governor in his re-election campaign).
9. DMHSA had determined the outcome of the RFP prior to its issuance. A Latte recruit went to work for DMHSA after being told by a DMHSA administrator that Latte would no longer be around. This occurred prior to the issuance of the most recent RFP.
10. Zackheim was given unfair advantages which violates procurement law:
  - Zackheim indicated in an interview that he was working on his RFP. The timeframe he referenced was prior to the RFP being available.
  - Zackheim paid for the airline ticket for a key DMHSA employee to visit his program.
  - At one point both Latte and Zackheim were disqualified but no reasons were given as to why. It is believed that Latte was erroneously disqualified.
  - DMHSA personnel began announcing Zackheim's name during one of its failed attempts to shut Latte down.
  - The sequence of RFPs developed in such a way to increasingly exclude Latte and include Zackheim. Restrictions were added that were tailored to exclude Dr. Valdes.
  - Zackheim responded to the wrong RFP and Latte should have been awarded it at that time, instead DMHSA cancelled the RFP and continued the process until this last RFP was finally won by Zackheim.
  - The review committee ignored or was ignorant to Zackheim's lack of personnel in place for all items in the RFP.

**Specific to Guam Law:**

**Possible Violations in Chapter 3 Source Selection and Contract Formation**

1. Item (3)(D) on page 14 of Chapter 3 on Bid Samples and Descriptive Literature

-Zackheim may have included additional literature that the committee should not have considered during the selection process; this would have to be verified upon review of Zackheim's proposal.

2. Item (3) on page 16 of Chapter 3 on Public Availability

-On two different RFPs, notice was available in the local newspaper but not available for inspection. When a Latte representative went to DMHSA to pick up a copy, once we were told that they were not available and to come back that afternoon and once we were given an unsigned copy and had to return the next day to get another one.

3. Item g. on page 16 of Chapter 3 on Bidder's List

-Zackheim was notified by DMHSA when the RFPs were available; Latte was not. DMHSA was well aware of Latte's intentions to respond to the RFPs.

4. Item (4) on page 17 of Chapter 3 on Pre-bid Conferences

-Latte did not receive invitations to pre-bid conferences nor did it receive summaries of information shared at pre-bid conferences.

5. Item (2) page 19 of Chapter 3 on Opening and Recording

-DMHSA did not make available for inspection the RFP recordings.

6. Item (2) on Page 48 of Chapter 3 on No Disclosure of Information.

-DMHSA disclosed information to Zackheim to improve his bid on subsequent RFPs. In particular when he responded to the wrong RFP and when he was disqualified.

7. Item 3129 through 3131 on page 99 of Chapter 3 on Maintenance of records of the bidding process

-This has not been made available for any of the 5 RFPs in this procurement process.

**Possible Violations of Chapter 5 Guam Procurement Law**

1. Item 5008 Policy in Favor of Local Procurement



-Latte Treatment Center is a locally incorporated entity with local employees a few off island consultants and one off island director. DMHSA originally requested that Latte building the local capacity by hiring and training local citizens. This was not considered in the bidding process. Zackheim has no local employees, no local corporation and no local cultural experience.

-The original contract allowed for renewal. The RFP process was not necessary.

2. Item 5225 page 37 of Chapter 5 on Cancellation of Bids and RFPs

-No reasons for cancellation were provided on any of the RFPs in this process regardless of repeated requests for such information.

3. Item 5485 page 70-71 of Chapter 5 on Complaints that Procurement Data was Withheld

-Latte made repeated requests for information on the RFPs but received none.

4. Item 5630 (d) on page 77-78 of Chapter 5 on Favors to the Territory

-Zackheim paid for one or more plane tickets for key personnel of DMHSA to visit his program.

Based on the foregoing and any other irregularities to be submitted at a later date, Latte is asking for full remedy of all 5 RFPs pursuant to Guam Procurement Law. In accordance with Guam's Procurement Regulations, I trust that a copy of this protest will be provided to the Attorney General within three days from receipt of this letter.

I await your response in writing.

Regrettably,

Carlos Perez  
Offerror  
Latte Treatment Center, LLC

Luis Valdes, PhD  
President  
Latte Treatment Center, LLC

**Attachment 2**  
**Attorney General's Office Notice of Protest Decision**  
**15 May 2008**

Alicia G. Limtiaco  
Attorney General



Alberto E. Tolentino  
Chief Deputy Attorney  
General

## Office of the Attorney General

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May 15, 2008

Mr. Carlos Perez  
Luis Valdes, Ph.D.  
Latte Treatment Center  
308 Father Duenas Drive  
Tamuning, Guam 96932

RE: TGHRPP

Dear Mr. Perez and Dr. Valdes:

We are hereby responding to your letter of December 21, 2007. You request a thorough investigation of the procurement process by an entity other than DMHSA. You do not, however, suggest what that entity should be. There is a legal process for bid protests that will determine whether there have been irregularities. If you believe there has been criminal wrongdoing, please refer the matter to the appropriate authorities.

We will respond to your bullet points one by one.

1. The Procurement Law does not require us to provide this documentation. Since the matter is in a litigation posture, we believe it is better not to provide it.
2. We do not believe the law permits you to reserve rights at this point.
3. The question of renewal of an older contract is not part of a bid protest. DMHSA has already explained the decision not to renew, which is more than it is required to do. It believes that the new vendor will perform better. Latte did not meet the bid criteria.
4. See answer to No. 3.
5. See answers to No. 1 and No. 3.
6. See answers to No. 1 and No. 3.
7. See answers to No. 1 and No. 3.
8. Dr. Zackheim has been exonerated by a court and by the relevant licensing board regarding this allegation, which has no bearing on the bid.
9. See answer to No. 8.
10. This allegation is ill founded and malicious. We will not respond further.
11. Latte did not meet the criterion DMHSA determined were appropriate to making the award.
12. This is a question about the state of the law. Please consult your attorney.

13. Originally, there was no money available, but DMHSA eventually chose to use other money from its budget to fund the contract.
1. This point lacks details. Please provide the times, dates, means of enquiry and the identities of the persons asked for information.
2. This point has no bearing on a bid protest. If Dr. Valdes believes he was defamed, he may consult an attorney.
3. We disagree that no reason was given. Latte did not meet the bid criteria.
4. Your use of the phrase "restriction of trade" is unclear. Failure to process invoices, or any problem that occurred in the administration of a previous contract, is not grounds for a bid protest. As you know, the government is experiencing financial difficulty. Payments were made as promptly as possible.
5. See answer to No. 4.
6. See answer to No. 4.
7. See answer to No. 4.
8. Even if this allegation were true, it would not violate the procurement laws. It is not relevant to a bid protest.
9. See answer to No. 8.
10.
  - a. See answer to No. 8.
  - b. See answer to No. 8.
  - c. See answer to no. 3. We cannot respond because you fail to state why Latte was erroneously disqualified.
  - d. See answer to No. 8.
  - e. We cannot respond because we fail to see from the vagueness of the allegation how the sequence of RFPs was altered.
  - f. See previous answer.

Possible Violations, etc.

1. We do not believe this is a violation and you fail to cite a law that would make it so.
2. Assuming that this allegation is true, it is not a violation.
3. Assuming that this allegation is true, it is not a violation.
4. We do not believe this is factually correct.
5. See answer to No. 2.
6. We cannot respond because you do not identify the person making the disclosure or the information disclosed.
7. We do not understand this allegation.

Possible Violations of Chapter 5 Guam Procurement Law

1. The bid winner will, as required by Guam law, acquire a Guam business license. It will also employ local residents in its program, as would seem inevitable. Local experience was not one of the bid criteria. We believe that the "local preference" in the law relates mainly to construction contracts and agreements to purchase items and much less to contracts to provide professional services.

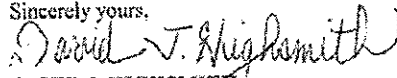
Mr. Carlos Perez  
Luis Valdes, Ph.D.  
Re: TGH RFP  
Page 5

2. As stated above, the administration of a previous contract has no bearing on a bid process. DMHSA was free to renew or go through procurement as its choice.
3. We cannot respond because you do not state what information was requested or allegedly withheld.
4. This had no bearing on the award.

Your letter alleges undue influence, defamation, favoritism and possible criminal activity. If you have the slightest evidence to support these allegations please provide it to us and to the appropriate authorities. If you do not, please cease from making unfounded, malicious allegations against government employees who bear you no ill will and do not deserve this treatment.

We are grateful to Latte for its years of service to the community. However, it is in everyone's best interest if Latte accepts this decision.

Sincerely yours,

  
DAVID J. HIGHSMITH  
Assistant Attorney General

**Attachment 3**  
**Latte Treatment Center Response to the AAG**  
**28 May 2008**

**Latte Treatment Center, LLC**  
308 Fr. Duenas Drive Tamuning, Guam 96913  
Phone 671-475-5390 Fax 671-475-5392

Andrea Leitheiser, PhD  
Acting Director  
790 Gov Carlos C. Camacho Rd  
Tamuning, Guam 96913

Re: TGH RFP

Date: 12/21/07

Dear Dr. Leitheiser:

I am turning over all matters and correspondence related to this protest to Dr. Luis Valdes, President of Latte Treatment Center. Please complete all correspondence to him as my representative from this point forward.

Pursuant to Chapter 5 of the Guam Procurement Law and Chapter 3 Source Selection and Contract Formation I am officially protesting the procurement process for RFP/DMHSASA 014-08.

Latte Treatment Center is asking for a thorough investigation of the procurement process by an entity other than DMHSA. Latte has experienced numerous irregularities and many more have been reported.

1. I am asking for copies of all documentation and data related to this RFP process pursuant to all applicable Guam laws, rules and regulations to be forwarded to the above address as soon as possible. This request includes documentation and data from all previous RFPs that have been part of this process.  
The Procurement Law does not require us to provide this documentation. Since the matter is in a litigation posture, we believe it is better not to provide it.

**Latte response to AAG letter: Noted.**

2. Pursuant to the rules of protest there is much to be reviewed that cannot be reasonably ascertained within the 14 day limit on the initiation of this protest. Therefore, Latte reserves the right to submit further evidence and information as it comes available within 30 days from receipt of the above requested information.

We do not believe the law permits you to reserve rights at this point.

**Latte response to AAG letter: Noted.**

3. Latte is requesting why the original multi-year contract (i.e. through 2009) was not renewed if funding was available for a new contract and contract negotiations were initiated on the Amendment to the contract.

3. The question of renewal of an older contract is not part of a bid protest. DMHSA has already explained the decision not to renew, which is more than it is required to do. It believes that the new vendor will perform better. Latte did not meet the bid criteria.

**Latte response to AAG letter: Agree that the renewal is not part of a bid protest; however, pursuant to 5GCA, Article 3, Part E, §5237, cancellation of multi-year contracts are allowable due to insufficient funds, yet DMHSA proceeded to initiate a Request for Proposal for the same services. Furthermore, based on the contractual provisions of the existing contract, termination is allowable for breach of contract provisions, yet no breach of contract has been communicated by DMHSA to Latte.**

**DMHSA letter, dated 14 Dec 07, indicated that contract would be awarded to other vendor; however, it did not indicate that Latte did not meet the bid criteria. Pursuant to 5GCA, Article 3, Section D, §5230, DMHSA failed to provide Latte with written determination of non-responsibility of bidder. Request OPA review procurement file to verify that Latte did not meet bid criteria.**

4. Latte is requesting an explanation why the department is seeking to change vendors when there have been no citations for below standard performance of Latte.
3. The question of renewal of an older contract is not part of a bid protest. DMHSA has already explained the decision not to renew, which is more than it is required to do. It believes that the new vendor will perform better. Latte did not meet the bid criteria.

**Latte response to AAG letter: Agree that the renewal is not part of a bid protest; however, pursuant to 5GCA, Article 3, Part E, §5237, cancellation of multi-year contracts are allowable due to insufficient funds, yet DMHSA proceeded to initiate a Request for Proposal for the same services. Furthermore, based on the contractual provisions of the existing contract, termination is allowable for breach of contract provisions, yet no breach of contract has been communicated by DMHSA to Latte.**

5. Latte is requesting specific details as to why Latte was declined in each of the first 4 RFPs, as no explanation was provided by DMHSA, as required by Guam Procurement Law
1. The Procurement Law does not require us to provide this documentation. Since the matter is in a litigation posture, we believe it is better not to provide it.



3. The question of renewal of an older contract is not part of a bid protest. DMHSA has already explained the decision not to renew, which is more than it is required to do. It believes that the new vendor will perform better. Latte did not meet the bid criteria.

**Latte response to AAG letter: Pursuant to 5GCA, Article 3, Part C, §5225, rationale for cancellation shall be part of the procurement file. Also, in accordance with 2 GAR, Div 4, § 3115, the justification for cancellation was not provided (i.e. "the notification of cancellation shall briefly explain the reason for cancellation). In addition, reasons for cancellation shall also be made available for public inspection. Based on the foregoing, Latte requests a copy of the reasons for cancellation. If a copy cannot be provided, Latte requests OPA determination if Latte can view the procurement file (i.e. public inspection).**

6. Latte is requesting why multiple RFPs were issued until Zackheim finally won.
  1. The Procurement Law does not require us to provide this documentation. Since the matter is in a litigation posture, we believe it is better not to provide it.
3. The question of renewal of an older contract is not part of a bid protest. DMHSA has already explained the decision not to renew, which is more than it is required to do. It believes that the new vendor will perform better. Latte did not meet the bid criteria.

**Latte response to AAG Letter: DMHSA letter, dated 14 Dec 07, indicated that contract would be awarded to other vendor; however, it did not indicate that Latte did not meet the bid criteria. Pursuant to 5GCA, Article 3, Section D, §5230, DMHSA failed to provide Latte with written determination of non-responsibility of bidder. Request OPA review procurement file to verify that Latte did not meet bid criteria. Pursuant to 5GCA, Article 3, Part C, §5225, rationale for cancellation shall be part of the procurement file. Also, in accordance with 2 GAR, Div 4, § 3115, the justification for cancellation was not provided (i.e. "the notification of cancellation shall briefly explain the reason for cancellation). In addition, reasons for cancellation shall also be made available for public inspection. Based on the foregoing, Latte requests a copy of the reasons for cancellation. If a copy cannot be provided, Latte requests OPA determination if Latte can view the procurement file (i.e. public inspection).**

7. Latte is requesting why an RFP was re-issued, when Zackheim responded to the wrong RFP.
  1. The Procurement Law does not require us to provide this documentation. Since the matter is in a litigation posture, we believe it is better not to provide it.

3. The question of renewal of an older contract is not part of a bid protest. DMHSA has already explained the decision not to renew, which is more than it is required to do. It believes that the new vendor will perform better. Latte did not meet the bid criteria.

**Latte response to AAG Letter: Latte requests OPA verify the dates of release of, responses to and reissuance of RFPs, to verify sequence of events. Request OPA review procurement file to verify that Latte did not meet bid criteria. If Latte did not meet the bid criteria. Pursuant to 5GCA, Article 3, Section D, §5230, DMHSA failed to provide Latte with written determination of non-responsibility of bidder.**

8. Latte is requesting an explanation of Zackheim's admission of paying for a trip of DMHSA staff.

8. ~~Dr. Zackheim has been exonerated by a court and by the relevant licensing board regarding this allegation, which has no bearing on the bid.~~

**Latte response to AAG letter: The AAG's response is not related to the Latte statement, but related to another matter. During KUAM telephone interview with Dr. Zackheim, he admitted paying for the airline tickets of DMHSA employees to visit his facility. Latte is requesting an OPA opinion, if the foregoing is true, is there a violation of public law for a government employee to receive gratuity or kickbacks, as outlined in 5GCA, Article 11, Part B, §5630, that could have potentially influenced the outcome of the contract award.**

9. Latte is requesting confirmation that the concerned DMHSA staff, who took a paid trip to Zackheim's facility, did *not* participate in any review panel for the responses to the RFPs.

8. ~~Dr. Zackheim has been exonerated by a court and by the relevant licensing board regarding this allegation, which has no bearing on the bid.~~

**Latte response to AAG letter: During KUAM telephone interview with Dr. Zackheim, he admitted paying for the airline tickets of DMHSA employees to visit his facility. Latte is requesting an OPA opinion, if the foregoing is true, is there a violation of public law for a government employee to receive gratuity or kickbacks, as outlined in 5GCA, Article 11, Part B, §5630, that could have potentially influenced the outcome of the contract award. Latte has knowledge that one of the employees, who allegedly received gratuity as mentioned above, was on the technical review panel of the responses to the RFP and, therefore, questions whether the integrity for fairness may potentially have been compromised.**

10. Latte is requesting to know why RFP language was modified to specifically address the sexual assault/misconduct allegations of the other bidder.

10. This allegation is ill founded and malicious. We will not respond further.

**Latte response to AAG letter: In the four (4) prior RFPs, there was no mention of this requirement. As communicated in the media, it was reported that Dr.**

**Zackheim had been allegedly involved in such activity. Reasonable suspicion would indicate that this information became a requirement of the RFP after the media attention to this issue.**

11. Latte is requesting to know why RFP language was altered to increasingly exclude Latte, particularly on the basis of erroneous information regarding Dr. Valdes' license and service provision status.
11. Latte did not meet the criterion DMHSA determined were appropriate to making the award.

**Latte response to AAG letter: In the four (4) prior RFPs, there was no mention of this requirement. Reasonable suspicion would indicate that this information became a requirement of the RFP after the opening of the four (4) prior RFPs.**

12. Latte is requesting whether it is lawful practice to modify information in a subsequent RFP with information gained from previous RFPs, which would create an advantage of one bidder over the other, as was done in this case.
12. This is a question about the state of the law. Please consult your attorney.

**Latte response to AAG letter: Noted. See two prior responses.**

13. Latte is requesting to know why it repeatedly stated that there was no money to pay Latte, then continued to use the Latte services and then suddenly did have money to pay Latte when there was a court order to do so.
13. Originally, there was no money available, but DMHSA eventually chose to use other money from its budget to fund the contract.

**Latte response to AAG letter: If there was no money available, DMHSA failed to terminate the contract in accordance with 5GCA Article 3, Part E, §5237; therefore, DMHSA failed to operate in good faith and allowed the services to continue, knowingly it did not have the funds to do so. The funding mentioned in the AAG response, refers to services delivered after the commencement of and upon receipt of FY 2008 funding. The foregoing does not apply to the services performed in June to September 2007.**

**Further basis of the protest is:**

1. DMHSA failed to respond to repeated requests for information throughout this procurement process as required by procurement law.
1. This point lacks details. Please provide the times, dates, means of enquiry and the identities of the persons asked for information.

**Latte response to AAG Letter: Request OPA obtain from DMHSA the responses to the inquiries, which will be forwarded to OPA under a separate cover letter.**

2. DMHSA acted on and promulgated misinformation about Dr. Valdes without attempting to contact him. Information that Dr. Valdes received from the DMHSA Acting Director was knowingly erroneous. Dr. Valdes alerted DMHSA to the error but the inquisition was not stopped.
2. This point has no bearing on a bid protest. If Dr. Valdes believes he was defamed, he may consult an attorney.

**Latte response to AAG Letter: Noted.**

3. DMHSA repeatedly disqualified Latte Treatment Center without giving reason as required by procurement law.  
defamed, he may consult an attorney.
3. We disagree that no reason was given. Latte did not meet the bid criteria.

**Latte response to AAG Letter: Request OPA review procurement file to verify that Latte did not meet bid criteria. If Latte did not meet the bid criteria. Pursuant to 5GCA, Article 3, Section D, §5230, DMHSA failed to provide Latte with written determination of non-responsibility of bidder. Request OPA provide written evidence that DMHSA provided Latte with a reason.**

4. DMHSA caused a restriction of trade for Latte by knowingly refusing to process invoices and making limited efforts to secure payment to Latte with full knowledge of the financial crisis it was creating for Latte.
4. Your use of the phrase "restriction of trade" is unclear. Failure to process invoices, or any problem that occurred in the administration of a previous contract, is not grounds for a bid protest. As you know, the government is experiencing financial difficulty. Payments were made as promptly as possible.

**Latte response to AAG Letter: Noted. However, failure to process invoices for services rendered is contrary to the response that payments were made as "promptly" as possible. In addition, knowingly allowed Latte to continue when funding was not available, as noted in the AAG's response.**

5. DMHSA's nonpayment caused a restriction of trade by knowingly crippling Latte's ability to give a full response to repeated RFPs.
4. Your use of the phrase "restriction of trade" is unclear. Failure to process invoices, or any problem that occurred in the administration of a previous contract, is not grounds for a bid protest. As you know, the government is experiencing financial difficulty. Payments were made as promptly as possible.

**Latte response to AAG Letter: Noted. However, failure to process invoices for services rendered is contrary to the response that payments were made as "promptly" as possible. In addition, knowingly allowed Latte to continue when funding was not available, as noted in the AAG's response.**

6. DMHSA knowingly and neglectfully did not complete the amendment to its contract with Latte with no indication as to why, yet, continuing to use the service, demanding full compliance with the contract and not paying for the service.
4. Your use of the phrase "restriction of trade" is unclear. Failure to process invoices, or any problem that occurred in the administration of a previous contract, is not grounds for a bid protest. As you know, the government is experiencing financial difficulty. Payments were made as promptly as possible.

**Latte response to AAG Letter: DMHSA knowingly allowed Latte to continue when funding was not available, as noted in the AAG's response.**

DMHSA created and promulgated the misinformation that Latte and DMHSA did not have a contractual agreement. This misinformation led to the issuance of the original RFP and its following revisions four months prior to the end of the contract year and with no indication as to why it was not exercising the renewal option on the contract. Yet, DMHSA continued to make referrals to Latte, demanded compliance with the terms of the contract and did not pay for the service.

4. Your use of the phrase "restriction of trade" is unclear. Failure to process invoices, or any problem that occurred in the administration of a previous contract, is not grounds for a bid protest. As you know, the government is experiencing financial difficulty. Payments were made as promptly as possible.

**Latte response to AAG Letter: DMHSA knowingly allowed Latte to continue services when funding was not available, as noted in the AAG's response. If funding was not available, DMHSA should have terminated the contract in accordance with 5GCA, pertaining to the termination of multi-year contracts (NOTE: The Latte Contract had multi-year provisions through to 30 Sep 09). The attached Letter of Intent from DMHSA indicates that Latte services were required until 30 Sep 07, yet DMHSA pursued a release of the RFP. Latte is of the opinion that DMHSA did not meet the spirit and intent of 5 GCA with respect to multi-year contracts and the termination thereof. In addition, DMHSA did not comply with 5 GCA by duly informing Latte "why" the contract would not be honored through to 30 Sep 09 (Contract end date).**

7. DMHSA illegally courted the off island provider with the purpose of eliminating Latte Treatment Center. No complaint has ever been filed against Latte's provision of service. To the contrary, all related agencies can attest to Latte's quality of care (e.g., GPSS, CPS, Superior Court of Guam, DYA, Project I'Famaguota and the Governor in his re-election campaign).
8. Even if this allegation were true, it would not violate the procurement laws. It is not relevant to a bid protest.

**Latte response to AAG letter: Noted. Request the OPA confirm if there was no violation of the Procurement law or the GAR.**

8. DMHSA had determined the outcome of the RFP prior to its issuance. A Latte recruit went to work for DMHSA after being told by a DMHSA administrator that Latte would no longer be around. This occurred prior to the issuance of the most recent RFP.
8. Even if this allegation were true, it would not violate the procurement laws. It is not relevant to a bid protest.

**Latte response to AAG letter: Noted. Request OPA confirm if there was no violation of the Procurement law or the GAR.**

9. Zackheim was given unfair advantages which violates procurement law:
  - Zackheim indicated in an interview that he was working on his RFP. The timeframe he referenced was prior to the RFP being available.
    8. Even if this allegation were true, it would not violate the procurement laws. It is not relevant to a bid protest.

**Latte response to AAG letter: Noted. Request OPA confirm if there was no violation of the Procurement law or the GAR.**

- Zackheim paid for the airline ticket for a key DMHSA employee to visit his program.
  8. Even if this allegation were true, it would not violate the procurement laws. It is not relevant to a bid protest.

**Latte response to AAG letter: During KUAM telephone interview with Dr. Zackheim, he admitted paying for the airline tickets of DMHSA employees to visit his facility. Latte is requesting an OPA opinion, if the foregoing is true, is there a violation of public law for a government employee to receive gratuity or kickbacks, as outlined in 5GCA, Article 11, Part B, §5630, that could have potentially influenced the outcome of the contract award. Latte has knowledge that one of the employees, who allegedly received gratuity as mentioned above, was on the technical review panel of the responses to the RFP and, therefore, questions whether the integrity for fairness may potentially have been compromised.**

- At one point both Latte and Zackheim were disqualified but no reasons were given as to why. It is believed that Latte was erroneously disqualified.
  3. We disagree that no reason was given. Latte did not meet the bid criteria.

- c. See answer to no. 3. We cannot respond because you fail to state why Latte was erroneously disqualified.

**Latte response to AAG letter: DMHSA letter, dated 14 Dec 07, indicated that contract would be awarded to other vendor; however, it did not indicate that Latte did not meet the bid criteria. Pursuant to 5GCA, Article 3, Section D, §5230, DMHSA failed to provide Latte with written determination of non-responsibility of bidder. Request OPA review procurement file to verify that Latte did not meet bid criteria. Pursuant to 5GCA, Article 3, Part C, §5225, rationale for cancellation shall be part of the procurement file. Also, in accordance with 2 GAR, Div 4, § 3115, the justification for cancellation was not provided (i.e. "the notification of cancellation shall briefly explain the reason for cancellation). In addition, reasons for cancellation shall also be made available for public inspection. Based on the foregoing, Latte requests a copy of the reasons for cancellation. If a copy cannot be provided, Latte requests OPA determination if Latte can view the procurement file (i.e. public inspection). Request OPA determine if Latte was erroneously disqualified on each of the RFPs issued.**

- DMHSA personnel began announcing Zackheim's name during one of its failed attempts to shut Latte down.
  8. Even if this allegation were true, it would not violate the procurement laws. It is not relevant to a bid protest.

**Latte response to AAG letter: Noted.**

- The sequence of RFPs developed in such a way to increasingly exclude Latte and include Zackheim. Restrictions were added that were tailored to exclude Dr. Valdes.
  - e. We cannot respond because we fail to see from the vagueness of the allegation how the sequence of RFPs was altered.

**Latte response to AAG letter: In the four (4) prior RFPs, there was no mention of this requirement. As communicated in the media, it was reported that Dr. Zackheim had been allegedly involved in such activity. Reasonable suspicion would indicate that this information became a requirement of the RFP after the media attention to this issue. In the four (4) prior RFPs, there was no requirement for the bidder to have a clinical license on Guam. Reasonable suspicion would indicate that this information became a requirement of the RFP after the opening prior RFPs. By DMHSA inserting this requirement in the fifth RFP, automatically placed Latte at an unfair advantage compare to the competitor, which would have led to Latte being ineligible of meeting RFP criteria.**

- Zackheim responded to the wrong RFP and Latte should have been awarded it at that time, instead DMHSA cancelled the RFP and continued the process until this last RFP was finally won by Zackheim.



- e. We cannot respond because we fail to see from the vagueness of the allegation how the sequence of RFPs was altered.

**Latte response to AAG Letter: Latte requests OPA verify the dates of release of, responses to and reissuance of RFPs, to verify sequence of events.**

- The review committee ignored or was ignorant to Zackheim's lack of personnel in place for all items in the RFP.

- e. We cannot respond because we fail to see from the vagueness of the allegation how the sequence of RFPs was altered.

**Latte response to AAG Letter: AAG response noted; however, it does not address the issue.**

### Specific to Guam Law:

#### **Possible Violations in Chapter 3 Source Selection and Contract Formation**

1. Item (3)(D) on page 14 of Chapter 3 on Bid Samples and Descriptive Literature

-Zackheim may have included additional literature that the committee should not have considered during the selection process; this would have to be verified upon review of Zackheim's proposal.

1. We do not believe this is a violation and you fail to cite a law that would make it so.

**Latte response to AAG Letter: Latte requests OPA confirm that this is not a violation.**

2. Item (3) on page 16 of Chapter 3 on Public Availability

-On two different RFPs, notice was available in the local newspaper but not available for inspection. When a Latte representative went to DMHSA to pick up a copy, once we were told that they were not available and to come back that afternoon and once we were given an unsigned copy and had to return the next day to get another one.

2. Assuming that this allegation is true, it is not a violation.

**Latte response to AAG Letter: Latte requests OPA confirm that this is not a violation.**

3. g. on page 16 of Chapter 3 on Bidder's List



-Zackheim was notified by DMHSA when the RFPs were available; Latte was not.  
DMHSA was well aware of Latte's intentions to respond to the RFPs.

2. Assuming that this allegation is true, it is not a violation.

**Latte response to AAG Letter: Latte requests OPA confirm that this is not a violation.**

4. Item (4) on page 17 of Chapter 3 on Pre-bid Conferences

-Latte did not receive invitations to pre-bid conferences nor did it receive summaries of information shared at pre-bid conferences.

4. We do not believe this is factually correct.

**Latte response to AAG Letter: Latte requests OPA review procurement file to confirm since the AAG response is not definitive.**

5. Item (2) page 19 of Chapter 3 on Opening and Recording

-DMHSA did not make available for inspection the RFP recordings.

2. Assuming that this allegation is true, it is not a violation.

**Latte response to AAG Letter: Latte requests OPA confirm that this is not a violation.**

6. Item (2) on Page 48 of Chapter 3 on No Disclosure of Information.

-DMHSA disclosed information to Zackheim to improve his bid on subsequent RFPs. In particular when he responded to the wrong RFP and when he was disqualified.

6. We cannot respond because you do not identify the person making the disclosure or the information disclosed.

We do not understand this allegation

**Latte response to AAG Letter: Latte requests OPA confirm the sequence and confirm Zackheim responded to the wrong RFP and, in Latte's opinion, should have been disqualified, which should have resulted in an award to Latte as a qualified bidder.**

7. Item 3129 through 3131 on page 99 of Chapter 3 on Maintenance of records of the bidding process

-This has not been made available for any of the 5 RFPs in this procurement process.

7. We do not understand this allegation.

**Latte response to AAG letter: Noted. No Comment.**

### **Possible Violations of Chapter 5 Guam Procurement Law**

#### **1. Item 5008 Policy in Favor of Local Procurement**

-Latte Treatment Center is a locally incorporated entity with local employees a few off island consultants and one off island director. DMHSA originally requested that Latte building the local capacity by hiring and training local citizens. This was not considered in the bidding process. Zackheim has no local employees, no local corporation and no local cultural experience.

-The original contract allowed for renewal. The RFP process was not necessary.

1. The bid winner will, as required by Guam law, acquire a Guam business license. It will also employ local residents in its program, as would seem inevitable. Local experience was not one of the bid criteria. We believe that the "local preference" in the law relates mainly to construction contracts and agreements to purchase items and much less to contracts to provide professional services.

**Latte response to AAG Letter: Latte had been established on Guam since 2005; whereas Zackheim's company was not even established on Guam. Latte is of the opinion that "local preference" applies to a wide-range of services, not "mainly" construction contracts.**

#### **2. Item 5225 page 37 of Chapter 5 on Cancellation of Bids and RFPs**

-No reasons for cancellation were provided on any of the RFPs in this process regardless of repeated requests for such information.

2. As stated above, the administration of a previous contract has no bearing on a bid process. DMHSA was free to renew or go through procurement as its choice.

**Latte response to AAG letter: Pursuant to 5GCA, Article 3, Part C, §5225, rationale for cancellation shall be part of the procurement file. Also, in accordance with 2 GAR, Div 4, § 3115, the justification for cancellation was not provided (i.e. "the notification of cancellation shall briefly explain the reason for cancellation). In addition, reasons for cancellation shall also be made available for public inspection. Based on the foregoing, Latte requests a copy of the reasons for cancellation. If a**

copy cannot be provided, Latte requests OPA determination if Latte can view the procurement file (i.e. public inspection).

3. Item 5485 page 70-71 of Chapter 5 on Complaints that Procurement Data was Withheld

-Latte made repeated requests for information on the RFPs but received none.

3. We cannot respond because you do not state what information was requested or allegedly withheld.

Latte response to AAG letter: Latte will provide evidence of requests under a separate letter to the OPA.

Item 5630 (d) on page 77-78 of Chapter 5 on Favors to the Territory

-Zackheim paid for one or more plane tickets for key personnel of DMHSA to visit his program.

4. This had no bearing on the award.

During KUAM telephone interview with Dr. Zackheim, he admitted paying for the airline tickets of DMHSA employees to visit his facility. Latte is requesting an OPA opinion, if the foregoing is true, is there a violation of public law for a government employee to receive gratuity or kickbacks, as outlined in 5GCA, Article 11, Part B, §5630, that could have potentially influenced the outcome of the contract award. Latte has knowledge that one of the employees, who allegedly received gratuity as mentioned above, was on the technical review panel of the responses to the RFP and, therefore, questions whether the integrity for fairness may potentially have been compromised.

Based on the foregoing and any other irregularities to be submitted at a later date, Latte is asking for full remedy of all 5 RFPs pursuant to Guam Procurement Law. In accordance with Guam's Procurement Regulations, I trust that a copy of this protest will be provided to the Attorney General within three days from receipt of this letter.

Your letter alleges undue influence, defamation, favoritism and possible criminal activity. If you have the slightest evidence to support these allegations please provide it to us and to the appropriate authorities. If you do not, please cease from making unfounded, malicious allegations against government employees who bear you no ill will and do not deserve this treatment.

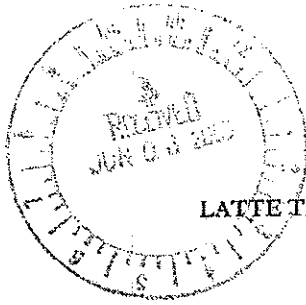
I await your response in writing.

Regrettably,

Carlos Perez  
Offerror  
Latte Treatment Center, LLC

Luis Valdes, PhD  
President  
Latte Treatment Center, LLC

**Attachment 4**  
**Original Latte Treatment Center & DMHSA Contract**



CONTRACTUAL AGREEMENT  
BETWEEN THE  
GOVERNMENT OF GUAM  
AND  
LATTE TREATMENT CENTER, INCORPORATED

THIS AGREEMENT is made this 01<sup>st</sup>, day of May, 2005, by and between the Department Of Mental Health And Substance Abuse (hereinafter called the Department), an agency of the Government of Guam (hereinafter called the Government), whose office address is 790 Governor Carlos G. Camacho Road, Tamuning, Guam 96911, Territory of Guam, and Latte Treatment Center, Incorporated. (hereinafter called the Contractor), whose address is 3926 Bahler, Manvel, Texas 77578.

WHEREAS, the Department of Mental Health & Substance Abuse is mandated to provide residential treatment programs pursuant to 10 GCA subsection 86105.A.1.b and 86109.1; and

WHEREAS, in 1994 the Governor, through executive order established the Child and Adolescent Services Division within the Department of Mental Health and Substance Abuse, and later established public policy to address the needs of children and adolescents with severe emotional disturbance; and

WHEREAS, the Government has a limited capacity in residential treatment programs and, therefore, is in the process of building treatment capacity in the community and expanding its expertise, knowledge and experience to provide optimum comprehensive treatment programs within a continuum of care to children and adolescents in need of treatment; and

WHEREAS, the Superior Court of Guam (SCOG) has identified minors with a severe emotional disturbance and in need of services from a therapeutic group home with a comprehensive treatment programs; it recognizes that Guam currently does not possess these resources locally, and has been referring minors for placement off-island; and

WHEREAS, SCOG is in receipt of petition for a minor to be allowed to return to Guam and to receive treatment at a level clinically required within a therapeutic group home program for minors who are mentally ill; and

WHEREAS, the SCOG in the interest of Juvenile Special Proceedings Case No. JSP0191-02 has issued a Declaratory Judgment on behalf of minor placed in off-island facility to the Department on the specific issue of its duty to provide a transitional home, on July 9, 2004, SCOG ordered the Department to develop and implement a plan to return the minor to the island and deliver services locally on Guam; and

WHEREAS, On July 14, 2004, issued an order to the Department to provide for a transitional facility and training during a 30-day visit of minor and simultaneously provide a therapeutic group home with a comprehensive treatment program on Guam immediately, and that such will be available to minor for as long as needed; and



WHEREAS, On September 2004, issued Stipulation and Order requiring the Department to open and properly staff a transitional home that meets the needs of the minor, and that such will be available to minor for as long as needed; and

WHEREAS, the procurement officer has provided adequate public announcement of the need for such service through a departmental Request for Proposal No. 2004-10 describing the type of services required and specifying the type of information and data required of each offeror and the relative importance of particular qualifications, in which no proposals were received; and

WHEREAS, the award of this contract has been made pursuant to findings by the Government that the Contractor is qualified based on the evaluation of services the Contractor is currently providing to children and adolescents that have been referred by the Superior Court of Guam for off-island treatment under the Government's Residential Treatment Fund Program; and

WHEREAS, the Government finds it necessary to procure the services from the Contractor through sole source procurement recognizing that the services needed by minor placed in off-island facility requires the same level of psychiatric care and a therapeutic environment that is mirrored to that which the minor is currently receiving for treatment on Guam to be effective; and

WHEREAS, the Government has three other minors in off-island facilities that are seeking assistance from the legal system to return to Guam, and the Government is in receipt of referral for other minors that need these services immediately; and

WHEREAS, the Government intends to engage the professional services of the Contractor to provide comprehensive treatment and programmatic activity to children and adolescents on Guam within a therapeutic group home setting; and

WHEREAS, the Contractor has submitted a statement of qualifications and an interest in providing such service, and that the Department negotiated compensation has been determined to be fair and reasonable.

NOW THEREFORE, the Government and the Contractor, in consideration of mutual covenant hereinafter set forth, agree as follows:

**SECTION I. PURPOSE**

I.1. To provide a continuum of mental health care for children/adolescents with severe emotional disturbances to include therapeutic group home, (24 hours a day 7 days a week) day treatment and respite care, clinical supervision, monitoring, and supportive services in a "surrogate family milieu" in a normalizing treatment environment, as well as other less restrictive treatment

alternatives.

I.2. Consumers of the program will be assisted in acquiring and/or improving life management skills to include: behavioral management; personal management; nutritional management; educational management; home management; medical medication management; daily activity time management; social skills; vocational skills; resource utilization; problem solving; coping behaviors; and personal safety. Caregivers shall ensure that all consumers of the program are made to feel welcomed, important, and wanted.

I.3. To provide resources for program management and operations such as: facility and equipment maintenance, purchase and management of supplies, food and filtered water; and the maintaining of all utilities to include: power, water, telephone, cable television, internet services and any other supports needed to maintain the program.

## **SECTION II. SCOPE OF SERVICES TO BE PROVIDED**

To provide comprehensive services that include therapeutic group home, day treatment and respite, within a continuum of care for children/adolescents with severe emotional disturbances that include supportive services to the program operation and management as follows:

II.1. Ensure acceptance and placement of appropriate referrals that are internal transfers from within the Government's services.

II.2. Services for consumers shall include, but not limited to, the following: milieu therapy; recreational therapy; case management services; mobility training; socialization skills; vocational skills; community living and independent living skills training; self-care and domestic skills training; positive behavior modification training; educational management; individual and family support counseling; medication management in the administering of medications; case management services to assist consumer on their needs assessment as identified on their Individualized Service Plans (ISP) / Wraparound Plans and updated periodically by the treatment team headed by the Service Provider's Case Worker and the Department.

II.3. Development of an Individualized Services Plan / Wraparound Plans will be coordinated by the Department's Wrap-Coordinator and Social Worker, the family/representative of the resident, and the resident. This Individualized Service Plan / Wraparound Plans shall be updated and amended as needs change and new services are required.

II.4. The number of admissions will be defined by policies and procedures of the Department and the Contractor. The referral of individuals requesting utilization of the therapeutic group home program services shall be directed to the Department for assessment of appropriate placement. The Contractor and the Department will collaborate when managing the number of admissions to this program considering the needs of the child/adolescent, the current level of acuity, and any other presenting clinical conditions. The Department's policies and procedures will determine the next appropriate program available for referrals not accepted.

II.5. Maximum of enrollment of ten (10) minors to the 24-hour component of the program per facility at any one time.

II.6. The staffing of each facility will include a program manager, social worker, and direct care workers that will serve and monitor admissions to the program providing 24 hours a day, 7 days



a week, to include weekend and holidays.

II.7. Provide a psychologist and/or psychiatrist when needed or as required by the Individual Service Plan / Wraparound Plan of the resident.

II.8. Provide a nurse for the medical needs and concerns of the consumers, and carryout the requirements of the attending psychiatrist and medical monitoring.

II.9. Be responsible for the recruitment, hiring and contracting of appropriate program supports to effectively operate and manage a 24-hour therapeutic group home program.

II.10. Maintain a service record in each resident's file, charting daily activities, to include: treatment or training plan, its progress and updates, general daily behavior observation and incidences.

II.11. Maintain staff certification in: CPR, first aid, behavioral prevention and intervention, and other mutually agreed certifications that would be required to provide optimum treatment. A copy of the staff certifications and /or re-certifications must be made available for review and provided (when requested) to the Department during regulatory review.

II.12. Provide access to medications as prescribed by authorized physician and aid in the administering of such in accordance with federal and local laws, rules, regulation and policy.

II.13. Program staff must possess and maintain current, required licensing.

II.14. Disseminate information regarding: the therapeutic group home program, referral and assistance components; and make a continuous effort to inform clients and their families of their rights and responsibilities, as well as additional services and opportunities available.

II.15. Establish internal policies and procedures governing the operations and administration of the program (i.e. standard operating procedures, Consumer Manual, etc.) and provide a copy to the Department for approval.

II.16. Transportation of consumers to access public recreation facilities, educational facilities, public health center, convenience stores and food establishments, and access to other locations as needed to provide for the well-being of the consumer.

II.17. Ensure the active promotion of community integration, inclusion and independence of each resident, appropriate to the situation and circumstances of each individual, to include but not limited to transportation and supervision to such events.

II.18. Ensure that the "best practice model" for services to individuals with severe emotional disturbances is applied in the operation and administration at all times.

II.19. Ensure that the following philosophy of a System of Care, to include the Core Values and Guiding Principles are applied within the operation and administration of the program, and are a part of the vision for community-based integrated services:

- a. The Core Values are:
  1. Child and Family Centered
  2. Strengths Based
  3. Community Based
  4. Culturally Competent
- b. Guiding Principles:
  1. Access to a comprehensive array of services
  2. Individualized services using a wraparound approach
  3. Least restrictive environment

4. Full family participation
5. Integrated services
6. Care coordination
7. Early Identification and Intervention
8. Smooth transitions
9. Rights of child protected
10. Non-discriminatory and culturally appropriate

II.20. Minimum Services must include but will not be limited to:

- a. Operational Services which shall include:
  1. The purchase of supplies, food, and filtered water.
  2. The direct payment for all utilities to include: power and water.
- b. Programmatic Services shall include assistance in achieving greater self-determination through the following supportive services:
  1. Personal Management - Perform appropriate individual grooming/hygiene activities (bathing; dressing up in appropriate and clean clothes) with increasingly reduced supervision.
  2. Nutritional Management - Able to identify and prepare nutritional food items with increasingly reduced supervision.
  3. Money Management - Able to develop and maintain a personal budget with increasingly reduced supervision.
  4. Home Management - Able to clean their bedroom as well as the communal rooms with increasingly reduced supervision. Able to appropriately perform household chores, yard maintenance, and laundry with increasingly reduced supervision.
  5. Medication Management - Able to identify prescribed medication(s) and understand the purpose and importance of its use as well as side effects. Able to identify and know the time of medication intake as well as the prescribed dosage.
  6. Educational Management - Able to participate in academic educational activities to the extent possible with increasingly reduced supervision. Able to increase academic productivity.
  7. Behavioral Management - Able to increasingly control emotional and behavioral functioning so that transition to a less restrictive level of care might be possible.
  8. Daily Time Management - Able to wake up at an appropriate time with increasingly reduced supervision. Able to participate in the scheduling of their day with program staff. Able to utilize and maintain their day's schedule with increasingly reduced supervision.
  9. Problem Solving - Able to identify and discuss problems in a timely and appropriate manner.
  10. Personal Safety Awareness - Able to recite emergency numbers and recognize and report personally dangerous situations. Able to recognize the proper use and storage of kitchen utensils, electrical appliances and household cleaners.
  11. Participation in Community-based and home-based activities.
  12. Supportive Counseling - Learn appropriate and acceptable behaviors. Aid in the resolution of personal problems.
  13. Vocational Development - Build skills; and training for employment.

II.21. Collaborate with Department's program supervisor on program policies and for reporting, and adhere to treatment provisions set forth by an individualized service plan.

II.22. Administrative services shall include activities associated with clinical support services, education, home management, and programmatic compliance and reporting. The following

are the program reporting requirements, the Department may include others as it deems necessary, and will advise the Contractor in advance when requesting additional formats:

- a. Document daily consumer activities and services in daily logs; and make available upon request to the Director or his designee,
- b. Provide program statistical data as defined by the Department, in meeting funding requirements,
- c. Submit monthly information (in advance) of scheduled events,
- d. Submit monthly programmatic and financial reports on program activities on the 10<sup>th</sup> day following the month the activities were performed.
- e. Submit detailed invoices monthly on the 10<sup>th</sup> day following the month costs were incurred; with supporting documents (i.e., receipts, paid invoices, etc) for each category of expenditures on all costs incurred.

II.23. The Contractor will use program policies and procedures when responding to emergency/crisis intervention or to any related emergency that arises. These policies and procedures will take into account the Department's policies and procedures to the maximum extent possible, with the aim to provide a safe and humane environment for the consumer. When there is conflict between the policies and procedures, the parties will resolve the issues to the satisfaction of both parties. The Contractor may utilize emergency assistance from public service providers, as it deems necessary.

II.24. The Contractor will ensure that all activities adhere to standards set by the Government and the departmental policies and procedures, or will approximate these as much as possible in the event of personnel shortage or resource unavailability.

II.25. The Contractor will provide the Department with professional consultation in administering programmatic services within a continuum of care for children/adolescents.

II.26. The Contractor will provide supports in the preparation of court proceedings and participation at court hearings when needed at the discretion of the Director or his designee.

II.27. The Contractor shall discuss and advise the Director or his designee on areas or issues of concern that are directly related to the services, operations, resources, and Department facilities. The Director or his designee shall respond to written concerns in writing within ten (10) days from being notified by the Contractor; and shall make every effort to expediently resolve such concerns with the Contractor.

II.28. The Contractor shall report to and be responsible to the Director of the Department of Mental Health and Substance Abuse or his designee.

### SECTION III. CONTRACT TERM

III.1. The initial term of this Agreement shall be for a period commencing upon the execution of this agreement and shall continue for a twelve (12) month period.

III.2. At the discretion of the Government and in accordance with multi-term procurement rules and regulations; annual renewal provisions may be granted through September 30, 2009, provided all terms and conditions are met and subject to the availability of funds.

repairs, which are not promptly made by the Contractor and may charge the cost thereof to the Contractor. The Contractor waives all rights to make repairs at the expense of the Department or to deduct costs thereof from the contract fee. This provision shall not apply to pre-existing defects, normal wear and tear or damages incurred by consumers. The Department shall promptly make repairs made necessary because of pre-existing defects or normal wear and tear.

**SECTION VI. DEPARTMENT AGREES TO PROVIDE THE FOLLOWING**

- VI.1 Utilization of the Department's property at 306 Father Duenas Drive, Perezville, and 168 Tun Josen Emetarian Camacho St., Oka; in Tamuning, Guam.
- VI.2 Access to utilities to include power, water & telephone as currently installed.
- VI.3 Use of facility, vehicle, furniture, and equipment for use in providing supportive and operational services to consumers of the program; acknowledgement of receipt by Contractor will be documented through the Department's "property receipt forms".
- VI.4 Access to training and education that includes the following:
- Psychotropic Medications (anti-psychotic) and Their Side Effects;
  - Certification of crisis intervention (as approved and accepted by the Department)
  - Clinical Assessment and Mental Status Examination (learning how to assess and evaluate a person's current mental state)
  - Treatment Planning (developing goals to address problem areas of the consumers)
  - Universal Precautions (standard procedures in preventing and handling hazardous and potentially hazardous materials)
  - Emergency Interventions (responses to typhoons, earthquakes, fires, etc.)
  - Drug and Alcohol Awareness
  - Sexual Harassment
  - Cultural Awareness/Sensitivity/Competence
  - Departmental and Government policies and procedures
- VI.5 Continued access to the Department's training and education workshops, resources, and materials as applicable to services provided by the Contractor.

**SECTION VII. SCOPE OF AGREEMENT**

VII.1 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the retaining of Contractor by the Department and contains all of the covenants and Agreements between the parties with respect to such retaining in any manner whatsoever. Each party to this Agreement acknowledges that no representation, inducements, promises or Agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other Agreement, statement, or promise not contained in this Contract shall be valid or binding. Any modification of this Contract will be effective only if it is in writing signed by the party to be charged. For the purposes of this paragraph and of the entire Agreement the signature of the Governor is the only signature that will bind the Department or the Government of Guam.

**SECTION VIII. ASSIGNMENT OF AGREEMENT**

- VIII.1 Contractor may not assign this Contract, or any sum becoming due Contractor

**SECTION IV. CONTRACTOR'S COMPENSATION FOR SERVICES**

IV.1 The Government will make available funding for this agreement to compensate Contractor a fee for services performed pursuant to Section II, *supra*, as follows:

IV.1.a Management and operational services that include therapeutic group home program, day treatment services and respite care; shall be Sixty Five Thousand Nine Hundred Dollars (\$65,900.00) per month.

IV.1.b Monthly reimbursement of direct utility expenditures for DMHSA facilities to include: power and water for term of this agreement.

IV.1.c Direct reimbursement of expenditures for medications as prescribed by authorized physician.

IV.1.d The Government shall compensate the Contractor monthly upon the submission of invoice in accordance with allowable expenditures of services rendered pursuant to Section II and Section IV.1.a-c of this Agreement. The compensation for reimbursements will be reconciled monthly based on the actual costs incurred as supported by validated receipts of purchases, costs incurred and expenditures.

IV.2 The total amount shall not exceed Eight Hundred and Five Thousand Dollars (\$805,000.00) per term of this agreement, for services rendered and reimbursement of actual costs incurred pursuant to Section II and Section IV.1.a-c.

IV.3 The Government shall submit payment to the Contractor for services rendered within 30 days of such submission. The Government shall take reasonable steps to facilitate prompt payment following receipt of invoice.

IV.4 Final payment and release of claims: Final payment shall be made upon satisfactory delivery and acceptance of all services as herein specified and performed under this Agreement. Prior to final payment and as a condition precedent thereto, the Contractor shall execute and deliver to the Government a release, in a form approved by the Government, of claims against the Government of Guam arising under and by virtue of this Agreement.

**SECTION V. CONTRACTOR AGREES**

V.1 The Contractor shall comply with funding requirement as defined by the Government and will acknowledge receipt of guidelines from the Department.

V.2 The Contractor shall take reasonable care when occupying the Government's facilities for the purpose of providing programs for children and adolescents; and shall not utilize the facilities for any other purposes without the written consent of the Department. The Contractor shall not do or permit anything to be done upon or about the premises or bring or keep anything in the premises that will in any way increase the risk of liability to the building, which the premises are situated. The Contractor shall maintain the facilities, appliances, equipment, furnishings, and lawn; when providing operational management of the facilities.

V.3 The Contractor shall take reasonable care of the premises and fixtures therein and shall make all repairs thereto or to the building, which are made necessary as a result of any misuse or neglect by the Contractor or by its representatives, agents, employees, visitors, or guests. All such repairs shall be at least equal in quality to the original work. The Department may make such

VIII.1 Contractor may not assign this Contract, or any sum becoming due Contractor under the provisions of this Contract, without the prior written consent of the Government.

**SECTION IX. GENERAL COMPLIANCE WITH LAWS**

IX.1 Contractor shall be required to comply with all Federal and Guam laws and regulations applicable to the work. Contractor shall attach a copy of its business license or a statement of exemption pursuant to Section 16024 of the Government Code.

**SECTION X. ACCESS TO RECORDS AND OTHER REVIEW**

X.1 The Contractor, including his/her subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of the final payment under the contract, for inspection by the Government of Guam. Each subcontract by Contractor pursuant to this Agreement shall include a provision containing the conditions of this Section.

**SECTION XI. OWNERSHIP OF DOCUMENTS AND EQUIPMENT**

XI.1 Furniture, equipment, and any other assets purchased by the Government, hereunder shall be and remain the properties of the Government and may be used by the Department without any additional cost to the Government.

XI.2 Work performed under this agreement, data collected and analyzed from Contractor, shall not be published or made public without the prior authorization of the Department and if publication is to take place it shall be under the authorship of the Department and Contractor. All publication rights and copyright interests, hereunder shall be and remains the property of the Government, and may be used by the Department without any additional cost to the Government.

**SECTION XII. INDEMNITY**

XII.1 The Contractor agrees to save and hold harmless the Government of Guam, their officers, agents, representatives, successors and assignors, and other governmental agencies from any and all suits or actions of every nature and kind, which may be brought for or on account of any injury, death, or damage arising or growing out of the negligent acts or omissions of the Contractor, its officers, agents, servants or employees under this Contract.

XII.2 The Government of Guam agrees to save and hold harmless the Contractor's officers, agents, representatives, successors and assignors, from any and all suits or actions of every nature and kind, which may be brought for or on account of any injury, death, or damage arising or growing out of the negligent acts or omissions of the Government of Guam, its officers, agents, servants or employees under this Contract.

**SECTION XIII. CHANGES**

XIII.1 The Department may at any time, by written order, make any change in the

services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the work under this Contract, or in the time required for this performance, a mutually agreeable adjustment shall be made and the Contract shall be modified in writing accordingly.

#### **SECTION XIV. NOTIFICATION OF CLAIMS**

XIV.1. The Contractor will, within thirty days after any claim accrues arising out of or in connection with this Agreement provided herein, give written notice to the Government and the Attorney General of Guam of such claim, setting forth in detail all the facts relating thereto and the basis for such claim; and the Contractor will not institute any suit or action against the Government in any court or tribunal in any jurisdiction based on any such claim later than one (1) year after such filing. Any action or suit on any claim shall not include any item or matter not specifically mentioned in the proof of claim above specified. It is agreed that if such action or suit is instituted, proof by the Contractor of its compliance with the provisions of this paragraph shall be a condition precedent to any recovery; and that this paragraph does not constitute a waiver of any applicable statutes of limitation.

#### **SECTION XV. TERMINATION**

XV.1 Either of the parties hereto, may terminate for breach of provisions in this Agreement in whole or in part at any time, by providing written notification to the other, justifying the reason for termination, effective date and termination provisions.

XV.2 In the event there is a deficiency in performance on the part of the Contractor, the Department shall notify the Contractor in writing, requiring said deficiency to be corrected. Should the deficiency prove to be substantial and remain uncorrected for more than 72 hours after receipt of written notification, the Department shall provide a written notice of intent to terminate the Agreement. If the termination by reason of the deficiency is found to be reasonable by both parties and within the scope of this Agreement, services will terminate immediately and with no penalty to the Department. The services rendered by the Contractor, until termination, shall be invoiced and payable immediately.

XV.3 Upon such termination, all briefs, reports, summaries, completed work and work in progress, and such other information and materials as may have been accumulated by Contractor in performing this Agreement shall, in the manner and to the extent determined by the Department, become the property of and be delivered to the Department

XV.4 All equipment purchased for use in the program and all unused supplies and materials will be transferred and returned to the Department by Contractor under written acknowledgement.

#### **SECTION XVI. SEVERABLE PROVISIONS**

XVI.1 If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the Contract and the Contract shall be enforced to its valid and subsisting terms and provisions.

**SECTION XVII. GOVERNING LAW**

XVII.1 The laws of Guam shall govern the validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract.

**SECTION XVIII. EFFECTIVE DATE OF AGREEMENT**

XVIII.1 This Contract shall take effect upon the date it is signed by the Governor of Guam and the date of this Contract shall be the date upon which the Governor affixed his signature.

**SECTION XIX. GOVERNMENT NOT LIABLE**

XIX.1 The Government assumes no liability for any accident or injury that may occur to Contractor or its agents or employees, personal property while enroute to or from this territory or during any travel mandated by the terms of this Agreement.

XIX.2 The Government shall not be liable to Contractor for any work performed by Contractor prior to the approval of this Contract by the Governor and Contractor hereby expressly waives any and all claims for service performed in expectation of this Contract prior to its approval by the Governor.



IN WITNESS WHEREOF, the parties have entered into this Agreement on the dates indicated by their respective names.

CONTRACTOR:

Luis Valdes PhD

Its duly authorized representative  
Latte Treatment Center, Inc.

Date: 5/12/05

GOVERNMENT OF GUAM:

J. Peter Roberto

J. PETER ROBERTO, Director  
Department of Mental Health  
And Substance Abuse

Date: 5/18/05

CERTIFIED FUNDS AVAILABLE:

Juanita P. Quintanilla

JUANITA P. QUINTANILLA  
Certifying Officer

Date: 5/25/05

Document No. \_\_\_\_\_

Account No. V101604232058101

Amount: \$ 805,000.00

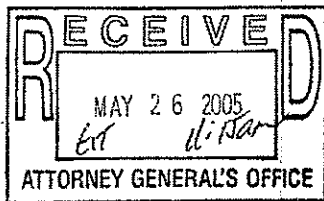
Legal Counsel,  
Latte Treatment Center, Inc.  
Date: \_\_\_\_\_

DEPARTMENT OF ADMINISTRATION	
DIVISION OF ACCOUNTS	
Registration Date	<u>Vendor # L0092578</u>
Registered No.	<u>C050604730</u>
Book No.	_____
Registered By	<u>Maria B.</u>

APPROVED:

\_\_\_\_\_  
CARLOS P. BORDALLO, Director  
Bureau of Budget and  
Management Research  
Date: \_\_\_\_\_

APPROVED AS TO LEGALITY AND FORM:



Douglas B. Moylan Jr  
DOUGLAS B. MOYLAN  
Attorney General of Guam  
Date: 5/26/05

APPROVED:

Felix P. Camacho  
FELIX P. CAMACHO  
Governor of Guam  
Date: 5/27/05

**Attachment 5**  
**Letter of Intent**

May 10, 2006

DMHSA 06-05025

Luis Valdes, PhD  
Administrator  
Latte Treatment Centers, LLC  
308 Father Duenas Drive  
Tamuning, Guam 96913

Dear Dr. Valdes:

Our Contractual Agreement to provide a therapeutic group home, day treatment, respite care, clinical supervision, monitoring and supportive services to children and adolescents at two of DMHSA's facilities will expire May 27, 2006. It is DMHSA's intent to renew the contract with Latte Treatment Centers, LLC (LTC) for a second term beginning May 28, 2006 and continuing through September 30, 2007. Pursuant to Section III.2 Contract Term, this contract is renewable for subsequent a term and funding has been identified.

If LTC intends to continue these services, please submit a letter of acceptance for the renewal by May 15, 2006, so that services will not be interrupted. Ms. Karen Aguilo will be contacting you to schedule a meeting to discuss the renewal provisions and negotiations of amendments. It is our goal to have the renewed contract finalized for execution by June 30, 2006.

Should you have any questions, please contact Ms. Aguilo at 647-5335 to advise of your intent and to confirm these dates. I look forward to working with LTC in meeting the needs of Guam's children.

Sincerely,

  
J. PETER ROBERTO, ACSW  
Director



department of  
**MENTAL HEALTH &  
SUBSTANCE ABUSE**  
Dipartimento Sa'ut Hinasso  
Yan Abusan Anot

790 Gov. Carlos G. Camacho Rd.  
Tamuning, Guam 96913  
Phone: 647-5330  
Fax: 647-6948

FELIX PEREZ CAMACHO  
Governor

KALEO SCOTT MOYLAN  
Lieutenant Governor

J. PETER ROBERTO  
Director

EDDY J. REYES  
Deputy Director