

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

Attorneys for Petitioner
Data Management Resources, LLC.

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PROCUREMENT AFFAIRS

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THE OFFICE OF PUBLIC ACCOUNTABILITY – GUAM
HAGÁTÑA, GUAM

In the Appeal of) DOCKET NUMBER. **OPA-PA-12-007**
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)
)
DATA MANAGEMENT RESOURCES, LLC,) **APPELLANT’S MOTION FOR DISCOVERY**
) **and**
Appellant.) **MOTION TO ENLARGE TIME FOR**
) **HEARING**
)

COMES NOW Appellant, DATA MANAGEMENT RESOURCES, LLC. (“DMR”), through undersigned counsel and moves the Public Auditor to issue an Order for Discovery for this appeal, pursuant to Title 2 Guam Administrative Rules & Regulations, Division 4, §12109(c) and §12104(c)(7), and Title 5 Guam Code Annotated, §9218, and moves to Enlarge Time for Hearing. This Motion is based upon the pleadings, the Memorandum of Points and Authorities submitted herein, and further evidence which may be presented at hearing on the motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural and Factual Background

This appeal involves the General Services Agency (GSA) Request for Proposal No. RFP/DOA-014-11 Point of Sale (hereinafter “RFP”) for a “Turn-Key” project to design, develop and implement a

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1 point-of-sale system which fully integrates payment processing for all Treasurer of Guam transactions.
2 The RFP was issued by GSA on behalf of Department of Administration (DOA), Department of
3 Revenue and Taxation (DRT) and departments of the Government of Guam. Agency Report, Tab. 5,
4 ¶1.2 of RFP.

5 Cost negotiations commenced with Appellant, as the Best Qualified Offeror, and was
6 subsequently and arbitrarily terminated without any determination by GSA and/or the Evaluation
7 Committee that the offer made by Appellant was not “fair and reasonable” for the services requested.
8 Two cost-negotiation meetings were held; on August 25, 2011, the following persons were in
9 attendance:
10

- 11 1. Elaine P. Fejeran, DRT
- 12 2. Rose Fejeran, DOA
- 13 3. Geri Delgado, DOA
- 14 4. Tom Ashe, BIT (Bureau of Information Technology)
- 15 5. Ken Borja, DOA
- 16 6. Lorraine Guerrero, DRT
- 17 7. Ben Camacho, GSA
- 18 8. Gina Taitano, DMR
- 19 9. Richard Taitano, DMR

20 Despite mandates of Guam Procurement Law, GSA now asserts that it is unable to locate the recordings
21 made of the August 25, 2011 meeting. *See Decl. J. Terlaje.*

22 On May 31, 2012 after the close business at 5:25 p.m., the Office of the Attorney General filed
23 its First Augmentation to the Procurement Record, stating, “It has been determined that additional
24 records may exist in electronic audio or visual format, but have been heretofore difficult to identify and
25 classify due to time constraints.” *First Augmentation*, p.1 (May 31, 2012)(emphasis added). On June 1,
26 2012, the Office of the Attorney General filed an Errata and Second Augmentation report stating
27 “Should additional portions of the procurement record come to the attention of the Department of
28

1 Administration, General Services Agency, it shall continue to promptly file these materials in further
2 augmentation of the record.” *Second* Augmentation, p. 2 (Jun. 1, 2012)(emphasis added).

3 **II. Legal Argument**

4
5 The Procurement Record as submitted by GSA is incomplete, and with an incomplete record, the
6 Hearings Officer will have an inadequate record to make a determination in this case. Thus, Appellant
7 seeks a Discovery Order permitting depositions to be taken in this matter relative to the RFP on appeal.

8 Guam Procurement Law grants the Hearings Office broad authority to order discovery, issue
9 subpoenas, and require certain evidence to be produced in procurement appeals. 5 GCA §12109(c) and
10 (i); 5GCA §12104(c)(7); and 5 GCA §9218. The pertinent provisions of Guam law provide:

11
12 §9218. On the verified petition of any party, an agency may order that the testimony of
13 any material witness residing within or without the territory of Guam be taken by
14 deposition in the manner prescribed by law for depositions in civil actions.

15 §12104(c)(7). Requested Information Time for Filing. In order to expedite
16 consideration of the Appeal, any additional information requested by the Hearing
17 Officer shall be submitted within five (5) working days of receipt of such request unless
18 another time is established in the request. Failure of any party to comply expeditiously
19 with a request for information by the Hearing Officer may result in resolution of the
20 Appeal without consideration of any information, which is untimely filed pursuant to
21 such request.

22 §12109(c). Require parties to produce for examination those relevant witnesses and
23 documents under their control.

24 §12109(i). Compel attendance and testimony of and production of documents by any
25 employee of the government of Guam, including any employee of any autonomous
26 agency, public corporation or board or commission.

27 In this case, the Appellee has not produced the entire procurement record. A cost-negotiation
28 was held on August 25, 2011. 5 G.C.A. §5249(c) requires that the procurement officer maintain a
complete record, including “sound recordings of all pre-bid conferences; negotiations arising from a
request for proposals . . .” In this case, it is indisputable that the Appellee was required to maintain a

1 complete record. However, the Appellee asserts that no sound record of the August 25, 2011 cost-
2 negotiation meeting can be located, or “does not exist.” Decl. J. Terlaje.

3 Additionally, as set forth fully in the declaration of undersigned counsel, there are additional
4 records that have not been produced in response to Sunshine Reform Act requests that were not included
5 in the Procurement Record submitted by the Appellee. In light of the obvious disarray of the
6 Procurement Record, the witnesses identified in Appellant’s Application for Deposition are material to
7 the determination of this procurement. Specifically, each of the following witnesses was involved in the
8 RFP process:
9

- 10 1. Claudia Acfalle, General Services Agency, Department of Administration
- 11 2. Elaine P. Fejeran, Department of Revenue & Taxation
- 12 3. Rose Fejeran, Treasurer of Guam, Department of Administration
- 13 4. Tom Ashe, formerly Bureau of Information Technology, Office of the Governor
- 14 5. Ben Camacho, General Services Agency, Department of Administration
- 15 6. Bernadette Artero, Office of the Governor
- 16 7. Benita Manglona, Department of Administration

17 The witnesses have information material to the procurement, which are missing or cannot be located by
18 Appellee and the attendance of the foregoing witnesses cannot be procured by Appellant without the
19 intervention of the Hearings Officer. Therefore, Appellant respectfully requests that an order of
20 discovery and subpoenas issue for the depositions of the foregoing witnesses.

21 Upon approval of the Hearings Officer, Appellant also seeks an enlargement of time in which the
22 hearing in this appeal will be heard. As set forth in the declaration of undersigned counsel, submitted
23 herewith, nearly 2000 pages of the Procurement Record have been produced, in addition to over 1400
24 pages of documents produced in response to a Sunshine Reform Act request. Prior to the instigation of
25 depositions, a review of all the documents will be necessary. Notwithstanding that the documents were
26 produced after the deadline in this case of May 31, 2012, and undersigned counsel has had a limited time
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1 frame to review the volumes produced, an enlargement of time is also necessary to permit undersigned
2 counsel to adequately prepare for the hearing in this appeal.

3 **III. Conclusion**

4 BASED ON THE FOREGOING, Appellant seeks an order permitting discovery, the issuance of
5 subpoenas for the witnesses identified in the Verified Application for Subpoenas, and an order enlarging
6 time for hearing in this matter.

7 RESPECTFULLY SUBMITTED on this 14th day of June, 2012.

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9 **LAW OFFICE OF
10 JACQUELINE TAITANO TERLAJE, P.C.**

11
12 By: 

13 **JACQUELINE TAITANO TERLAJE**
14 Attorney for Appellant