

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Mr. Tyrone J. Taitano Director Bureau of Statistics & Plans Government of Guam P.O. Box 2950 Hagåtña, Guam 96932 Phone: (671) 472-4201/3 Fax: (671) 477-1812	From:	Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
		Pages:	6 (including cover page)
CC:	Kevin J. Fowler, Esq. (Attorney for Appellant Re/Max) Roberts Fowler & Visosky, LLP Suite 201, Orlean Pacific Plaza 865 South Marine Corps. Drive Tamuning, Guam 96913 Phone: (671) 646-1222 Fax: (671) 646-1223	Date:	April 15, 2019
		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951

Re: OPA-PA-19-003 Notice of Receipt of Appeal

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com

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OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910
Phone: (671) 475-0390 / FAX: (671) 472-7951

April 15, 2019

Mr. Tyrone J. Taitano
Director
Bureau of Statistics & Plans
Government of Guam
P.O. Box 2950
Hagåtña, Guam 96932

VIA FACSIMILE: (671) 477-1812

Re: Notice of Receipt of Appeal – OPA-PA-19-003

Dear Mr. Taitano,

Please be advised that Re/Max Diamond Reality (hereinafter referred to as “Re/Max” filed an appeal with the Office of Public Accountability (OPA) on April 12, 2019, regarding the Bureau of Statistics and Plans’s (BSP) response to Re/Max’s protest of BSP’s Request for Proposal No. RFP-BSP-2019-001, procurement of professional services to provide Information Technology Infrastructure, Site Security, Support and Management, and IT Compliant Office Space to Conduct the 2020 Guam Census. OPA has assigned this appeal case number OPA-PA-19-003.

Immediate action is required of BSP pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at www.opaguam.org. The first three pages of the notice of appeal filed with OPA is enclosed for your reference.

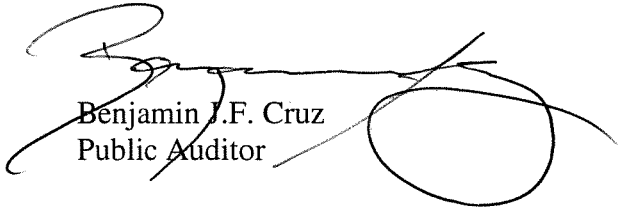
Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Monday, April 22, 2019**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Monday, April 29, 2019**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to Re/Max. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that BSP provide one original and two copies of the said record, which will be distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,



Benjamin J.F. Cruz
Public Auditor

Enclosure: First Three Pages of the Notice of Appeal – OPA-PA-19-003

Cc: Kevin J. Fowler, Attorney for Re/Max

Kevin J. Fowler
ROBERTS FOWLER & VISOSKY, LLP
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865 South Marine Corps Drive
Tamuning, Guam 96913
Telephone No. (671) 646-1222
Facsimile No. (671) 646-1223
E-mail: fowler@guamlawoffice.com

Attorneys for Appellant
Re/Max Diamond Realty

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DATE: April 12, 2019
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THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of)
)
RE/MAX DIAMOND REALTY,)
)
Appellant.)
_____)

Docket No. OPA-PA _____

**NOTICE OF PROCUREMENT
APPEAL**

Appellant Information:

Re/Max Diamond Realty ("Re/Max")
238 E. Marine Corps Drive, Suite 202
Hagatna, Guam 96910
Tel: (671)-479-9532

Appeal Information:

- A) Bureau of Statistics & Plans ("BSP")
- B) RFP-BSP-2019-001, a procurement solicitation for professional services.
- C) Decision being appealed is the BSP's March 28, 2019, denial of Re/Max's March 28, 2019, procurement protest.
- D) Appeal is made from a decision on protest of method, solicitation or award.
- E) Names of competing bidders: Quantum Technology Group.

Form and Filing:

1. On or about February 15, 2019, the BSP let the subject Request for Proposals ("RFP"), for professional services.

2. On or about March 8, 2019, Re/Max submitted its proposal in response to the RFP. *See*, Exhibit A.

3. In a letter dated March 18, 2019, the BSP advised Re/Max that, due to a withdrawal, Re/Max was the “Best Qualified Offeror.” *See*, Exhibit B.

4. On March 26, 2019, the BSP hand-delivered to Re/Max a “Notice of Termination of Negotiations”, dated March 22, 2019, advising that the BSP was terminating negotiations with Re/Max. *See*, Exhibit C.

5. On March 28, 2019, Re/Max served the BSP with its protest of the decision by the BSP to terminate negotiations with Re/Max. *See*, Exhibit D.

6. On March 28, 2019, within a few hours of serving its protest, the BSP delivered a letter to Re/Max denying its protest. *See*, Exhibit E. The protest denial did not address any of the points raised by Re/Max in its protest. While the letter makes reference to 2 GAR § 9101(e)(1) and implies that the BSP needed to proceed with the procurement without delay, this is not a substantial interest determination as authorized by 5 GCA § 5425(g)(1), because only the Chief Procurement Officer or the Director of the Department of Public Works can make or execute such a determination. The letter was signed by a Matthew Santos, who is not even the Director of the BSP, and is not the Chief Procurement Officer of the government of Guam or the Director of Public Works. Of course, even if the Chief Procurement Officer or the Director of Public Works desired to make or execute such a determination, they couldn’t do that without the written concurrency of the Attorney General.

7. On April 11, 2019, Re/Max received a “Notice of Award” from the BSP, which was dated April 10, 2019, and which purported to select Quantum Technology Group (“Quantum”) as the winning offeror. The “Notice of Award” confirms, however, that a contract has not been awarded to the selected offeror. *See*, Exhibit F.

8. In its letter terminating negotiations, the BSP stated that it could not agree that Re/Max had a “clear understanding of the scope of services, specifically, the essential requirements involved in providing the services in the RFP.” The BSP also stated that the parties could not agree “upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.”

9. Re/Max had an absolutely clear understanding of the scope of services. However, during negotiations with the BSP, its negotiators stated that the scope of services outlined in the RFP were only “guidelines” to be considered in formation of a proposal. The BSP negotiators also advised that the BSP only had a budget of \$1.0 Million Dollars for the procurement. However, in unsuccessfully seeking to inspect the BSP procurement file on April 11, 2019, Re/Max’s Leonard Campos was advised by BSP personnel that the offeror selected by the BSP had proposed a contract price of \$1.8 Million Dollars.

10. The Guam Procurement Act mandates that government agencies accord fair and equitable treatment to all persons dealing with the procurement system. *See*, 5 GCA § 5001(4) (“The underlying purposes and policies of this Chapter are: ... to ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory.”). Government agencies are also mandated to negotiate in good faith. *See*, 5 GCA § 5003 (“This chapter requires all parties involved in the negotiation ... of territorial contracts to act in good faith.”). The BSP violated these provisions by taking the position that its detailed scope of services in the RFP were mere “guidelines.” It also violated these provisions by advising Re/Max that the BSP only had a budget of \$1.0 Million Dollars, but then selecting an off-island offeror that proposed \$1.8 Million Dollars.

11. The Guam Procurement Act and its implementing regulations also have very strict requirements for the development of specifications. 2 GAR § 4102(a)(1), for example, requires that “[s]pecifications shall be drafted with the objective of clearly describing the territory’s requirements.” *See, also*, 2 GAR § 3114(f)(2) (“Proposals shall be evaluated only on the basis of evaluation factors stated in the Request for Proposals.”). The BSP violated the specification development provisions of Guam procurement law by articulating a very specific scope of services that offerors had to meet, but then taking the position that the scope of services were mere “guidelines” and that, therefore, Re/Max failed to illustrate that it had a “clear understanding of the scope of services, specifically, the essential requirements involved in providing the services in the RFP,” and, on that basis, terminating negotiations with Re/Max.

12. Re/Max requests that the Public Auditor rule that the BSP’s denial of Re/Max’s protest was arbitrary, capricious and an abuse of discretion, that the Public Auditor order the BSP to set aside its Notice of Award to Quantum and order the BSP to resume negotiations with Re/Max in good faith. Re/Max further requests that the Public Auditor immediately issue an order enforcing the automatic stay of procurement arising under 5 GCA § 5425(g).

13. Re/Max has attached all supporting documents as exhibits hereto.

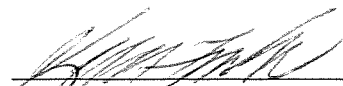
Declaration regarding court action:

Re/Max confirms that an action in court has not been commenced.

Dated this 12th day of April, 2019.

ROBERTS FOWLER & VISOSKY, LLP

By:



KEVIN J. FOWLER
Attorneys for Appellant
Re/Max Diamond Realty

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Thank you,
Jerrick Hernandez, Auditor
jhemandez@guamopa.com

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002	968	6716461223	01:52:54 p.m. 04-15-2019	00:01:18	6/6	1	EC	HS	CP26400

Abbreviations:

HS: Host send
HR: Host receive
WS: Waiting send

PL: Polled local
PR: Polled remote
MS: Mailbox save

MP: Mailbox print
RP: Report
FF: Fax Forward

CP: Completed
FA: Fail
TU: Terminated by user

TS: Terminated by system
G3: Group 3
EC: Error Correct