

1 Jacqueline Taitano Terlaje, Esq.  
2 Rachel Taimanao-Ayuyu, Esq.  
3 **LAW OFFICE OF JACQUELINE TAITANO TERLAJE, P.C.**  
4 888 North Marine Corps Drive, Suite 215  
5 Tamuning, Guam 96913  
6 Telephone 671.648.9001  
7 Facsimile 671.648.9002  
8 Email: [info@terlajelaw.com](mailto:info@terlajelaw.com)

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
JUN 28 2011  
TIME: 4:14 BY: Mac  
FILE NO. OPA-PA: 11-010

9 Attorneys for *Data Management Resources, LLC*

10 **THE OFFICE OF PUBLIC ACCOUNTABILITY – GUAM**  
11 **HAGATNA, GUAM**

12 In the Appeal of ) NOTICE OF APPEAL FROM DECISION ON  
13 DATA MANAGEMENT RESOURCES, ) PROTEST  
14 LLC, Appellant )  
15 )  
16 ) DOCKET NUMBER. OPA-PA 11-010

17 **PART II Appellant Information**

18 Name: Data Management Resources, LLC (“DMR”)  
19 Mailing Address: 284 W. Chalan Santo Papa, Hagatna, Guam 96910  
20 Business Address: 284 W. Chalan Santo Papa, Hagatna, Guam 96910  
21 Daytime Contact: Richard C. Taitano, Chief Executive Officer 671.647.3675

22 **PART III Appeal Information**

- 23 A) Purchasing Agency: Bureau of Information Technology  
24 B) Number/Description of Procurement:  
25 **RFP-OOG-023-10: Guam Enterprise Email System**

26 **COPY**

1 Decision being appealed was untimely failure of Ed C. Cruz, Chief Information Officer and  
2 General Services Agency, Claudia Acfalle, Chief Procurement Officer, to respond to Protest  
3 dated April 21, 2011 submitted by DMR of the Termination of Negotiation forwarded to DMR  
4 on April 8, 2011 and received on April 11, 2011. Pursuant to 2 G.A.R. ("Guam Administrative  
5 Rules and Regulations") §9103(d)(3), no written decision or final decision was rendered within  
6 60 days after written request by DMR.  
7

8 C) Appeal is made from:

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

- 10  Decision on Protest of Method, Solicitation or Award
- 11  Decision on Debarment or Suspension
- 12  Decision on Contract or Breach of Contract Controversy  
13 (Excluding claims of money owed to or by the government)
- 14  Determination on Award not Stayed Pending Protest or Appeal  
15 (Agency decision that award pending protest or appeal was necessary to  
16 protect the substantial interests of the government of Guam)

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

- 18 (i) Upon information and belief, a determination by BIT was made that DMR was  
19 the only responsive bidder to RFP-OOG-023-10.  
20

21 **PART IV Form and Filing**

22 **A. Grounds for Appeal**

23 (1) The Government of Guam by Bureau of Information Technology (hereinafter  
24 "BIT") issued RFP-OOG-023-10 for the Guam Enterprise Email System.

25 (2) On or about February 3, 2011, DMR was notified that it was the best qualified  
26 offeror for RFP-OOG-023-10. A true and correct copy is attached hereto as Exhibit 1.  
27

1 (3) Upon information and belief, DMR was the only responsive bidder to RFP-  
2 OOG-023-10.

3 (3) On or about April 11, 2011<sup>1</sup>, DMR received notification from BIT of the intent  
4 to terminate negotiations. A true and correct copy is attached hereto as Exhibit 2.

5 (4) On or about April 13, 2011, DMR served its request for information relating to  
6 RFP-OOG-023-10 pursuant to 5 Guam Code Annotated (GCA) §10106, as amended (the  
7 “Sunshine Reform Act of 1999”), on BIT, the Department of Administration (hereinafter  
8 “DOA”) and the Bureau of Budget and Management Research (hereinafter “BBMR”). DOA  
9 and BBMR have completely failed to comply with the Sunshine Reform Act of 1999, as  
10 amended, and have failed to provide disclosure of any public documents.

11 (6) On or about April 21, 2011, DMR lodged a protest with BIT related to the  
12 termination of negotiations (hereinafter “Protest”). A true and correct copy is attached hereto  
13 as Exhibit 3.

14 (5) June 20, 2011 was the sixtieth day from the Protest.

15 (6) Pursuant to 2 Guam Administrative Rules and Regulations (GAR) §9103(d)(3),  
16 an adverse decision against DMR is automatically presumed by the Government of Guam’s  
17 failure to timely respond to the Protest.

18 (7) DMR alleges that there are numerous grounds for appeal on BIT’s purported  
19 termination of negotiation:

20 (i) BIT failed to act in good faith, as required by 5 GCA §5003 in negotiation of a  
21 contract under the RFP-OOG-023-10.

22 (ii) BIT failed to act in good faith, as required by 2 GAR §1105.

23 (iii) BIT failed to comply with 2 GAR §3114(l). Specifically, the following:  
24  
25  
26

27 <sup>1</sup> Although the letter was dated February 21, 2011, BIT failed to notify DMR of its intent to terminate until April  
28 11, 2011 when the letter was served via email.

- 1 (a) BIT failed to specify the reasons it was “unable to meet the  
2 compensation rate of your final offer;”  
3 (b) BIT failed to determine in writing that the compensation offered by  
4 DMR was not fair and reasonable;  
5 (c) BIT failed to direct its negotiations to agree upon compensation which is  
6 fair and reasonable prior to terminating the negotiations;  
7 (d) BIT failed to make a written record stating the reasons that the contract  
8 could not be agreed upon; and  
9 (e) BIT failed to provide written notice of the termination of negotiations  
10 within three (3) days.

11 (8) Upon information and belief, the Government of Guam has not disclosed all  
12 documents relevant to this proceeding, and pursuant to a Sunshine Reform Act Request  
13 instituted for and on behalf of DMR. DMR hereby reserves the right to further submit  
14 additional bases for protest of the termination of negotiation upon disclosure of public  
15 documents.

16 (9) Upon information and belief, on or about November 18, 2010, during the  
17 pendency of RFP-OOG-023-010, BIT entered into a contract and has expended funds for email  
18 services under a contract with the Telecommunications and Information Policy Group of the  
19 Research Corporation of the University of Hawaii (hereinafter “UH TIPG”). A true and correct  
20 copy of the COS Circular 11-001, its attachments and amendment are attached hereto as  
21 Exhibit 4.

22 **B. Prayer For Relief**

23 (1) Appellant seeks ratification and affirmation in this Appeal of its Protest to RFP-  
24 OOG-023-10;

25 (2) Appellant requests that the Office of the Public Auditor make a finding that the  
26 Government of Guam’s termination of negotiation was not made in good faith;  
27

1 (3) Appellant Requests that the Government of Guam be required to comply with  
2 the good faith negotiation requirements set forth by Guam law, and rules and regulation in the  
3 negotiation and formation of the contract for RFP-OOG-023-10;

4 (3) Appellant seeks any other relief that the Office of the Public Auditor deems just  
5 and appropriate under the circumstances.

6 **C. Supporting Exhibits, Evidence or Documents**

7 Exhibit 1 February 3, 2011 Notice of Best Qualified Offeror  
8 Exhibit 2 April 11, 2011 Termination of Negotiation Notice  
9 Exhibit 3 April 21, 2011 DMR Protest to RFP-OOG-023-10  
10 Exhibit 4 COS Circular 11-001; its amendment and attachments

11 **D. Declaration Re Court Action**

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

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

21 RESPECTFULLY SUBMITTED on this 28<sup>th</sup> day of June, 2011

22  
23 By: 

24 **TRICIA T. CRUZ**

25 Appellant's Duly Authorized Representative  
26 284 W. Chalan Santo Papa, Hagåtña, Guam 96910  
27 671.647.3674

LAW OFFICE OF  
JACQUELINE TAITANO TERLAJE, P.C.

**Original signed by:**  
**Jacqueline Taitano Terlaje**

By:

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JACQUELINE TAITANO TERLAJE  
Attorneys for Appellant  
*Data Management Resources, LLC*

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EDDIE BAZA CALVO  
Governor



RAY TENORIO  
Lieutenant Governor

*Office of the Governor of Guam*

February 3, 2011

Data Management Resources, LLC  
284 W. Chalan Santo Papa  
Hagatna, Guam 96910

Subject: Guam Enterprise Email System RFP-OOG-023-10 Notification

Dear Mr. Taitano,

The Bureau of Information Technology (BIT) and the Guam Enterprise Email System RFP-OOG-023-10 selection panel has completed its evaluation and has selected Data Management Resources, LLC as the best qualified offeror.

Please provide your cost proposal in a sealed envelope and deliver to Data Processing Division, 2<sup>nd</sup> Floor. We ask you to submit 1 original and 5 copies to Mary Mendiola by 9:00 AM Friday, February 4, 2011. We will commence negotiations toward the award of a contract on February 4, 2011 at 1:00 PM.

Should you have any questions, please email [mary.mendiola@doa.guam.gov](mailto:mary.mendiola@doa.guam.gov).

Sincerely,



Ed C. Cruz

BIT Chief Information Officer

**Subject:** FW: Guam Enterprise Email System (RFP-OOG-023-10): Termination of Negotiation Notice  
**From:** "MMendiola" <mary.mendiola@doa.guam.gov>  
**Date:** Mon, 11 Apr 2011 13:51:08 +1000  
**To:** <dmr@dmrguam.com>  
**CC:** "Ed Cruz" <ed.cruz@bit.guam.gov>

This is a follow up. Please acknowledge receipt of this email.

Best Regards,  
Mary Mendiola

---

**From:** Mary Mendiola  
**Sent:** Friday, April 08, 2011 4:01 PM  
**To:** 'dmr@dmrguam.com'  
**Cc:** 'Ed Cruz'  
**Subject:** Guam Enterprise Email System (RFP-OOG-023-10): Termination of Negotiation Notice

Termination of Negotiation Notice attached.

Best Regards,

Mary Mendiola  
DOA Data Processing Division

img-406175523-0001.pdf	<b>Content-Type:</b> application/pdf
	<b>Content-Encoding:</b> base64



EDDIE BAZA CALVO  
Governor



RAY TENORIO  
Lieutenant Governor

*Office of the Governor of Guam*

February 21, 2011

Richard Taitano  
284 W. Chalan Santo Papa  
Hagatna, Guam 96910

Re: **Termination of Negotiation Notice**  
**Request for Proposal No.: RFP-OOG-023-10**  
**(Guam Enterprise Email System)**

Dear Mr. Taitano:

Buenas Yan Hafa Adai! Thank you for submitting your best and final offer on February 4, 2011. Please be informed that the government is unable to meet the compensation rate of your final offer.

Pursuant to 2 GAR §3114(l)(4)(a) you are hereby notified that negotiations are now terminated.

Sincerely,

Ed C. Cruz  
BIT Chief Information Officer

April 21, 2011

VIA FACSIMILE NO. 671.472-9508  
and via email ed.cruz@bit.guam.gov

**ED C. CRUZ**  
Chief Information Officer  
**BUREAU OF INFORMATION TECHNOLOGY**  
P.O. Box 2950  
Hagatna, Guam 96932

RE: Protest RFP-OOG-023-10 Guam Enterprise Email System

Dear Mr. Cruz,

On behalf of Data Management Resources, LLC (DMR), I hereby submit this formal protest of the Termination of Negotiation forwarded to DMR on April 8, 2011. DMR protests the termination of negotiation on the following grounds:

- (1) BIT failed to act in good faith, as required by §5003 of Title 5 of the Guam Code Annotated in formation of the contract under the award of RFP-OOG-023-10.
- (2) BIT failed to act in good faith, as required by §1105 of the Guam Administrative Rules and Regulations (GAR).
- (3) BIT failed to comply with 2 GAR §3114(l). Specifically, the following:
  - (i) BIT failed to specify the reasons it was “unable to meet the compensation rate of your final offer;”
  - (ii) BIT failed to determine in writing that the compensation offered by DMR was not fair and reasonable;
  - (iii) BIT failed to direct its negotiations to agree upon compensation which is fair and reasonable prior to terminating the negotiations;
  - (iv) BIT failed to make a written record stating the reasons that the contract could not be agreed upon; and
  - (v) BIT failed to provide written notice of the termination of negotiations within three (3) days.

DMR reserves the right to further submit additional bases for protest of the termination of negotiation upon disclosure of public documents by BIT pursuant to the Sunshine Reform Act of 1999, as amended, which was delivered to BIT on April 20, 2011.

Best regards,

/s/  
**JACQUELINE TAITANO TERLAJE**

EXHIBIT 3  
DMR'S PROTEST APPEAL

EDDIE BAZA CALVO  
Governor



RAY TENORIO  
Lieutenant Governor

*Office of the Governor of Guam*

COS CIRCULAR 11-001

February 15, 2011

To: All Agency and Department Heads  
Office of the Attorney General

From: Chief of Staff

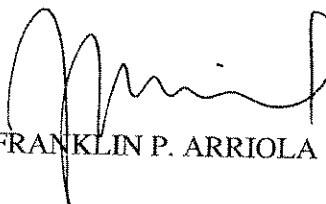
Subject: Email Services Cooperative Agreement Cost Share

*Hafa Adai!*

The Office of the Governor, through the Bureau of Information Technology (BIT), has entered into a Cooperative Agreement with the University of Hawaii to set forth a plan of action pertaining to the government-wide email services under the gov.guam domain.

There is a cost share for each agency that has been identified based on the total number of computers per agency connected to the Department of Administration Data Services Division servers. Each agency will need to process a journal voucher (JV) for the amount listed on Attachment 1 within 10 working days from the date of this circular. A sample JV (Attachment 2) is provided for appropriate account and reference numbers. Please have your ASO prepare and process the JV by the deadline. DOA is hereby instructed to process the JVs for all departments and agencies that do not process their JVs by the deadline.

Should you have any questions, please contact Ed Cruz, Chief Information Officer, BIT at 929-4463 or [ed.cruz@bit.guam.gov](mailto:ed.cruz@bit.guam.gov).



FRANKLIN P. ARRIOLA

Attachment

### Computer Count by Agency

Agency	Domain	Count	Pct	Cost per Agency
Attorney General's Office	ag.guam.gov	160	6.7	2,020.20
Bureau of Budget & Management Resource	bbmr.guam.gov	21	0.9	265.15
Bureau of Statistics & Plans	bsp.guam.gov	29	1.2	366.16
Council on Arts & Humanities Agency	caha.guam.gov	11	0.5	138.89
Chamorro Land Trust Commission	cltc.guam.gov	16	0.7	202.02
Contractors License Board	cib.guam.gov	12	0.5	151.52
Customs & Quarantine	cqa.guam.gov	90	3.8	1,136.36
Dept of Administration	doa.guam.gov	130	5.5	1,641.41
Dept of Chamorro Affairs	dca.guam.gov	19	0.8	239.90
Dept of Corrections	doc.guam.gov	100	4.2	1,262.63
Dept of Labor	dol.guam.gov	100	4.2	1,262.63
Dept of Land Management	dim.guam.gov	0	0.0	0.00
Dept of Mental Health	dmhsa.guam.gov	150	6.3	1,893.94
Dept of Parks & Rec	dpr.guam.gov	31	1.3	391.41
Dept of Public Health & Social Services	dphss.guam.gov	450	18.9	5,681.82
Dept of Public Works	dpw.guam.gov	100	4.2	1,262.63
Dept of Revenue & Tax	revtax.gov.gu	300	12.6	3,787.88
Dept of Youth Affairs	dya.guam.gov	28	1.2	353.54
Dept of Intergrated Services for Individuals w/ Disability	disid.guam.gov	36	1.5	454.55
Environmental Protection Agency	epa.guam.gov	77	3.2	972.22
Guam Commission for Educator's Certification	gcec.guam.gov	14	0.6	176.77
General Services Agency	gsa.guam.gov	25	1.1	315.66
Gov./Lt. Gov. Office	guam.gov	90	3.8	1,136.36
Guam Election Commission	gec.guam.gov	10	0.4	126.26
Guam Homeland Security	ghs.guam.gov	53	2.2	669.19
Guam Housing Corporation	ghc.guam.gov	26	1.1	328.28
Guam Police Dept	gpd.guam.gov	250	10.5	3,156.57
Guam Public Library	gppls.guam.gov	48	2.0	606.06
<b>Total Number of Accounts Established:</b>		<b>2,376</b>		

Total Project Cost

30,000.00

30,000.00



DEPARTMENT OF ADMINISTRATION

Division of Accounts  
JOURNAL VOUCHER

EXHIBIT 4  
DMR PROTEST APPEAL  
Page 3 of 6

DEPT. J.V. # \_\_\_\_\_

DOA JV #: \_\_\_\_\_

AGENCY: \_\_\_\_\_

DATE: \_\_\_\_\_

PAGE: \_\_\_\_\_ OF \_\_\_\_\_

TRAN CODE	ACCOUNT NO. (DESCRIPTION)	PRIOR REFERENCE	VENDOR #	DEBIT	CREDIT
391	Agency Job Order No.			Amount to JV	
	Agency Account No.	COS Circular 11-001			
391	0200-11-001-230				Amount to be JV'd
	5100A110200GA001				
<b>SAMPLE</b>					
<b>TOTAL</b>				\$0.00	\$0.00

EXPLANATION:

For reimbursement to Executive Direction for Cooperative Agreement re government-wide email services.

AGENCY USE ONLY:

PREPARER TO CHECK:

- // TRANSACTION CODES ARE CORRECT
- // ACCOUNT NUMBERS ARE CORRECT
- // PRIOR REFERENCES ARE CORRECT
- // VENDOR NUMBERS ARE CORRECT
- // JOURNAL VOUCHER IS BALANCED

Prepared By: \_\_\_\_\_

Date \_\_\_\_\_

APPROVING OFFICIAL TO CHECK:

- // I CERTIFY FUNDS ARE AVAILABLE (REQUIRED FOR ALL APPROPRIATION ACCOUNTS)
- // I CERTIFY ALL COSTS CHARGED ARE CONSISTENT WITH REQUIREMENT OF APPROPRIATION LAW OR FEDERAL GRANT OR AGREEMENT AND ELIGIBLE TO BE CHARGED (APPROPRIATION ACCOUNTS ONLY)
- // I CERTIFY ENTRIES ARE PROPER AND AUTHORIZED BY LAW, RULE OR REGULATION.

Approved By: \_\_\_\_\_

Date \_\_\_\_\_

DIVISION OF ACCOUNTS USE ONLY:

Accountant/Tech Supv Reviewing/Date \_\_\_\_\_ / \_\_\_\_\_  
 // OVERRIDE IS AUTHORIZED BY MANAGER  
 Manager Reviewing/Date \_\_\_\_\_ / \_\_\_\_\_

Posted By/Date \_\_\_\_\_ / \_\_\_\_\_  
 Batch Posted \_\_\_\_\_

EDDIE BAZA CALVO  
Governor



RAY TENORIO  
Lieutenant Governor

*Office of the Governor of Guam*

EXHIBIT 4  
DMR PROTEST  
Page 4 of 6

**COS CIRCULAR 11-001 AMENDED**

April 15, 2011

To: All Agency and Department Heads, Executive Branch  
Office of the Attorney General

From: Chief of Staff

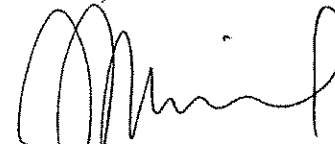
Subject: Telecommunications Cooperative Agreement Cost Share

*Hafa Adai!*

The Office of the Governor, through the Bureau of Information Technology (BIT), has entered into a Cooperative Agreement with the University of Hawaii to set forth a plan of action pertaining to the government-wide telecommunications technical assistance and bid planning.

There is a one time cost share for each agency that has been identified based on the total number of email accounts per agency connected to the Department of Administration Data Services Division servers. Each agency listed in the table attached will need to process a journal voucher (JV) for the amount listed on Attachment 1 within 10 working days from the date of this circular. A sample JV (Attachment 2) is provided for appropriate account and reference numbers. Please have your ASO prepare and process the JV by the deadline. BBMR is hereby instructed to process the JVs for all departments and agencies that do not process their JVs by the deadline.

Should you have any questions, please contact Ed Cruz, Chief Information Officer, BIT at 929-4463 or [ed.cruz@bit.guam.gov](mailto:ed.cruz@bit.guam.gov).



FRANKLIN P. ARRIOLA

Attachments





DEPARTMENT OF ADMINISTRATION

Division of Accounts  
JOURNAL VOUCHER

EXHIBIT 4  
DMR PROTEST APPEAL

DEPT. J.V. # \_\_\_\_\_

Page 6 of 6  
DOA JV #: \_\_\_\_\_

AGENCY: \_\_\_\_\_

DATE: \_\_\_\_\_

PAGE: \_\_\_\_\_ OF \_\_\_\_\_

TRAN CODE	ACCOUNT NO. (DESCRIPTION)	PRIOR REFERENCE	VENDOR #	DEBIT	CREDIT
391	Agency Job Order No.	COS Circular 11-001		Amount to JV	
	Agency Account No.				
391	0200-11-001-230 5100A110200GA001				Amount to be JV'd
<b>SAMPLE</b>					
<b>TOTAL</b>				\$0.00	\$0.00

EXPLANATION:

For reimbursement to Executive Direction for Cooperative Agreement re government-wide telecommunications technical assistance and bid planning.

AGENCY USE ONLY:

PREPARER TO CHECK:

- // TRANSACTION CODES ARE CORRECT
- // ACCOUNT NUMBERS ARE CORRECT
- // PRIOR REFERENCES ARE CORRECT
- // VENDOR NUMBERS ARE CORRECT
- // JOURNAL VOUCHER IS BALANCED

Prepared By: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVING OFFICIAL TO CHECK:

- // I CERTIFY FUNDS ARE AVAILABLE (REQUIRED FOR ALL APPROPRIATION ACCOUNTS)
- // I CERTIFY ALL COSTS CHARGED ARE CONSISTENT WITH REQUIREMENT OF APPROPRIATION LAW OR FEDERAL GRANT OR AGREEMENT AND ELIGIBLE TO BE CHARGED (APPROPRIATION ACCOUNTS ONLY)
- // I CERTIFY ENTRIES ARE PROPER AND AUTHORIZED BY LAW, RULE OR REGULATION.

Approved By: \_\_\_\_\_

Date: \_\_\_\_\_

DIVISION OF ACCOUNTS USE ONLY:

Accountant/Tech Supv Reviewing/Date \_\_\_\_\_ / \_\_\_\_\_  
 // OVERRIDE IS AUTHORIZED BY MANAGER  
 Manager Reviewing/Date \_\_\_\_\_ / \_\_\_\_\_

Posted By/Date \_\_\_\_\_ / \_\_\_\_\_  
 Batch Posted \_\_\_\_\_