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 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS
 JUL 06 2012
 TIME 4:00 PM BY M. HUFFER
 FILE NO. OPA-PA-12-007

Attorneys for the General Services Agency

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

IN THE APPEAL OF)	DOCKET NO. OPA-PA-12-007
)	
DATA MANAGEMENT RESOURCES,)	DECLARATION OF
LLC.)	BENITA MANGLONA
)	
Appellant.)	

I, Benita Manglona, do hereby declare:

1. I am the Director of Administration.
2. As the head of the purchasing agency in RFP/DOA-014-11, I made the decision on February 25, 2012 to cancel this solicitation due to a lack of adequate funds to acquire the Point of Sale System and hardware.
3. The exchange of emails between myself and the Chief Procurement Officer between February 22, 2012 and February 25, 2012 are the written documentation establishing the grounds and the rational to cancel this solicitation. Those emails are attached here and marked as Exhibit A. Those emails are located in the Procurement Record at Tab # 11.
4. I have executed a formal Written Determination that embodies more clearly the rational for the decision I made on February 25, 2012. That Written Determination was

COPY

placed into the procurement record on July 5, 2012. A copy of that document is attached hereto and marked as Exhibit B.

5. I have reviewed the documentation in the procurement record and information developed by the Office of the Attorney General as a result of the investigation conducted in response to the appeal filed herein by Data Management Resources, LLC. Based upon that information, I have executed a Supplemental Written Determination and placed it into the procurement record on July 5, 2012. A copy of that document is attached hereto and marked as Exhibit C.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge and belief.

Dated: July 6, 2012.

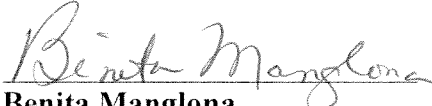

Benita Manglona

EXHIBIT A



Claudia Acfalle <claudia.acfalle@gsa.guam.gov>

POS

3 messages

Claudia Acfalle <claudia.acfalle@gsa.guam.gov>
To: Benita Manglona <benita.manglona@doa.guam.gov>

Wed, Feb 22, 2012 at 6:41 PM

Boss:

I received the Best and Final Offer from DMR. The Best and Final Offer submitted by DMR is \$1,823,100.00. The budgeted amount for this project is \$383,483.88. Will you be able to identify any other funds to proceed with this award? Pls. advise as soon as possible so I am able to take the next step of the RFP process.

Claudia

Claudia Acfalle <claudia.acfalle@gsa.guam.gov>
To: Benita Manglona <benita.manglona@doa.guam.gov>

Sat, Feb 25, 2012 at 2:00 PM

Boss:

Just following up on your disposition of the POS. I believe time is not on our side because the funds will be expiring in April. Pls. let me know ASAP.

Thank you in advance!

Claudia

[Quoted text hidden]

benita.manglona@doa.guam.gov <benita.manglona@doa.guam.gov>
Reply-To: benita.manglona@doa.guam.gov
To: Claudia Acfalle <claudia.acfalle@gsa.guam.gov>

Sat, Feb 25, 2012 at 3:06 PM

Pls just cancel. It is obvious we don't have the funds even if they want to challenge it. Thanks. I am down with the flu. Hope to be better by monday.

Sent from my MPULSE BlackBerry powered by GTA!

From: Claudia Acfalle <claudia.acfalle@gsa.guam.gov>
Date: Sat, 25 Feb 2012 14:00:50 +1000
To: Benita Manglona <benita.manglona@doa.guam.gov>
Subject: Fwd: POS

[Quoted text hidden]

A

EXHIBIT B

COPY



Eddie Baza Calvo
Governor
Ray Tenorio
Lieutenant Governor

Government of Guam
(Gubetnomention Guahan)
Department of Administration
(Dipattamenton Atmenestration)
Post Office Box 884 Hagatña, Guam 96932
Tel: (671) 475-1101/1250 * Fax: (671) 477-6788



Benita A. Manglona
Director
Anthony C. Blaz
Deputy Director

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mmv
2012 JUL -5 AM 11:04

Written Determination

This writing, prepared on July 3, 2012, documents, pursuant to 2 GAR, Div. 4 §3115(d)(2)(iv), the determination that I made on February 25, 2012 that there were not adequate funds available to acquire the services and hardware being offered by Data Management Services, LLC, in RFP/DOA-014-11, Acquisition of a Point of Sale system and hardware. Reasonable efforts were made by the government to decrease the scope of services and hardware to be acquired, and even with the best efforts of the government and Data Management Resources, LLC, it is apparent to me that this acquisition is not possible at this time. There exists a gap of approximately One Million, Four Hundred Forty Thousand, and One Hundred Dollars (\$1,440,100) between the amount that the government has to purchase the services and hardware, and the amount that Data Management Resources, LLC is seeking for the same. It was in the best interests of the Government of Guam and in this territory's interest, to cancel the solicitation for the reasons stated here.

Benita Manglona
Benita Manglona, Director of Administration
Head of the Purchasing Agency

July 3, 2012.

B

EXHIBIT C

COPY



Eddie Baza Calvo
Governor
Ray Tenorio
Lieutenant Governor

Government of Guam
(Gubetnomention Guahan)
Department of Administration
(Dipattamenton Atmenestration)
Post Office Box 884 Hagatña, Guam 96932
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2012 JUL -5 AM 11:04
Benita A. Manglona
Director
Anthony C. Blaz
Deputy Director

Supplemental Written Determination

This determination is prepared to supplement the procurement record in RFP/DOA-014-11 based upon information provided to me in an investigation that has occurred subsequent to the original cancellation of the solicitation. Had I been aware of this information on or about February 25, 2012, or earlier, I would have cancelled this solicitation on the basis of fundamental unfairness and lack of competition in the procurement process.

I have determined that it is in the best interests of the territory and the Government of Guam to cancel this solicitation because:

1. There was inadequate notice of the solicitation given to the market place as required by procurement regulation §3109(f) Public Notice in that the one advertisement run in the Marianas Variety on April 1, 2011 was not adequate to give notice to a sufficient number of offerors for purpose of soliciting competition.
2. There appears to be evidence that prospective offerors, to include the Bank of Guam, were not provided adequate information that was available and requested in order for there to be competitive offerors submitted to the government. The materials at Tab # 7 of the Procurement Record filed with the Office of Public Accountability are being reviewed to assess this matter in greater detail.
3. There has been a Counter-Offer made by the government in this matter that was not based upon any appropriation or any reasonable belief that funds would become available to meet this offer had it been accepted.
4. The Counter-Offer itself is unacceptable because it only offers to pay the exact amount the offeror was requesting in its basic underlying offer.
5. A fiber optic cable has been brought to my attention that provides the possibility that the offeror had access to confidential government information at both the Department of Administration and the General Services Agency concerning this solicitation. The possibility of this access creates an unfair situation in this procurement.

It was in the best interests of the Government of Guam and in this territory's interest, to cancel the solicitation for pursuant to 2 GAR, Div.4 §3115(d) (2) (A).

Benita Manglona
Benita Manglona, Director of Administration
Head of the Purchasing Agency

July 3, 2012.

C