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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
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FILE NO OPA-PA: 12-018

9 **OFFICE OF PUBLIC ACCOUNTABILITY**
10 **PROCUREMENT APPEALS**

11 IN THE APPEAL OF
12 TELEGUAM HOLDINGS LLC and its
13 WHOLLY OWNED SUBSIDIARIES,
14 GTA TELECOM LLC; GTA SERVICES
15 LLC and PULSE MOBILE LLC,

16 Appellants.

OPA Docket No. OPA PA 12-018

**REQUEST OF PACIFIC DATA
SYSTEMS, INC. FOR A SCHEDULING
CONFERENCE**

17 NOW COMES Interested Party Pacific Data Systems, Inc. ("PDS") and
18 requests the Public Auditor to set a time for a Scheduling Conference in this matter, and
19 as grounds therefore states as follows:

20 1. The Public Auditor issued her Decision in OPA-PA-12-018 on
21 March 6, 2013. That Decision affirmed GSA's denial of a protest of Teleguam Holdings,
22 LLC ("GTA").

23 2. Thereafter, GTA appealed the Public Auditor's Decision to
24 Superior Court in CV0334-13.

25 3. By Decision and Order dated August 8, 2014, the Hon. A. Barcinas
26 vacated the Public Auditor's Decision, and ordered the Public Auditor to issue a new
27 Decision. A copy of this Decision & Order is attached hereto.

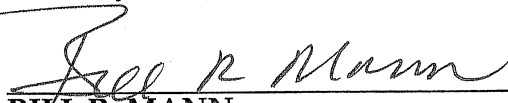
28 4. The implementation of this part of IFB No. GSA-064-11 has been
long delayed. PDS respectfully requests the Public Auditor to hold a Scheduling

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Conference at its earliest convenience so that progress can be made on the final resolution of this matter.

DATED this 22nd day of August, 2014.

BERMAN O'CONNOR & MANN
Attorneys for *PACIFIC DATA SYSTEMS, INC.*

By: 
BILL R. MANN

Attachment

B. MANN

FILED
SUPERIOR COURT
OF GUAM

2014 AUG -8 PM 3: 21

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IN THE SUPERIOR COURT OF GUAM

TELEGUAM HOLDINGS LLC AND ITS
WHOLLY OWNED SUBSIDIARIES,

Plaintiff,

v.

TERRITORY OF GUAM; DEPARTMENT
OF ADMINISTRATION, GENERAL
SERVICES AGENCY; THE OFFICE OF
PUBLIC ACCOUNTABILITY; PACIFIC
DATA SYSTEMS, INC.,

Defendants.

CIVIL CASE NO. 0334-13

DECISION AND ORDER

INTRODUCTION

This matter came before the Honorable Arthur R. Barcinas on the 18th day of June, 2014, for an evidentiary hearing held with regard to the Plaintiff's Motion for Sanctions and the Defendant Government of Guam's Cross-Motion for Sanctions. Attorney Vincent C. Camacho represented the Plaintiff Teleguam Holdings LLC, and Assistant Attorney General Fred Nishihira represented the Defendant Government of Guam. Defendant Pacific Data Systems, Inc. is represented by Attorney Bill R. Mann, who appeared at the hearing and waived his client's right to be present. At the close of the hearing, the Court took the matter under advisement. For the reasons set forth below, the Plaintiff's Motion for Sanctions is GRANTED and the Defendant's Cross-Motion for Sanctions is DENIED.

FACTUAL AND PROCEDURAL HISTORY

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2 This action arises out of the Government of Guam's efforts to improve its electronic data
3 transfer capacity. In 2010, the Bureau of Information Technology ("BIT"), through its
4 employee, the Government of Guam's Chief Information Officer at the time, Ed Cruz,
5 contracted with Dr. Norman Okamura and his team to develop bid specifications for an
6 Invitation for Bids ("IFB") to telecommunications services providers. Dr. Okamura is a
7 telecommunications expert at the University of Hawaii's Telecommunications and Social
8 Informatics Research Program. The resulting draft bid went to the General Services Agency
9 ("GSA") for finalization.
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11 After changes were made to the bid, on June 22, 2011 GSA issued IFB GSA 064-11,
12 soliciting a wide variety of telecommunications equipment and services. At issue in this case is
13 Bid Form 11 of IFB GSA 064-11, Part E, for the Dedicated GovGuam Wide Area Network
14 ("GGWAN"). Part E concerned 1 Gbps and 10 Gbps broadband data transfer infrastructure and
15 service for the Government of Guam. Teleguam Holdings LLC ("GTA") and Pacific Data
16 Systems, Inc. ("PDS") submitted bids. GTA submitted the lower bid for 1 Gbps service, but
17 PDS submitted the lower bid for 10 Gbps service. PDS's aggregate bid for 1 Gbps and 10 Gbps
18 service was lower than GTA's bid. On May 11, 2012, GTA protested GSA's recommendation
19 to award Part E to PDS, which would grant PDS the contract for both 1 Gbps and 10 Gbps
20 service. The Chief Procurement Officer denied GTA's protest on October 19, 2012.
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22 Thereafter, on November 5, 2012, GTA appealed to the Office of Public Accountability
23 ("Public Auditor"), in Procurement Appeal No. OPA-PA-12-018. The grounds for the appeal
24 included GTA's lower bid for 1 Gbps service, and GSA's evaluation of the bids purely on price
25 rather than on technical submissions. On January 29 and 30, the Public Auditor conducted an
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1 evidentiary hearing. At that hearing, Ed Cruz testified that while the two networks, 1 Gbps and
2 10 Gbps, could potentially be provided by multiple vendors, the resulting administrative
3 inconvenience of having multiple vendors would make the system as a whole less efficient and
4 more burdensome to the Government of Guam. On March 6, 2013, the Public Auditor affirmed
5 GSA's denial of GTA's protest, concluding that only one bidder should be awarded a contract
6 for Bid Form 11, that PDS offered a lower aggregate price for the two services included in Bid
7 Form 11, and that the resulting award to PDS was proper.
8

9 On March 20, 2013 GTA filed a Complaint before this Court. The complaint alleges the
10 following: that the Public Auditor's decision that only one contract should be awarded for IFB
11 GSA 064-11 Part E is arbitrary, capricious, clearly erroneous, or contrary to law; that the Public
12 Auditor's affirmation of the award of Part E to PDS is arbitrary, capricious, clearly erroneous,
13 or contrary to law; and that GSA erred in aggregating the prices for Part E. GTA prayed for the
14 following relief: that this Court stay the award of Part E; that this Court find that the Public
15 Auditor's decision was arbitrary, capricious, clearly erroneous, or contrary to law; that this
16 Court vacate the award of Part E; that this Court award the 1 Gbps network to GTA; for
17 attorney's fees and costs; and for other relief as the Court may deem appropriate. The
18 Government filed an Answer on April 25, 2013.
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21 On September 27, in response to a dispute between the parties over the proper
22 procedural rules, the Court applied the Supreme Court's holding in Town House Department
23 Stores v. Department of Education, 2012 Guam 25 ¶ 28, and held that this procurement
24 challenge was a civil action that must be governed by the Guam Rules of Civil Procedure.
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1 On December 3, 2013 the Court issued a Discovery and Scheduling Order, limiting the
2 scope of discovery to relevant issues not developed in the administrative record. The discovery
3 schedule was expedited, due to the extensive administrative record already developed.

4 In its Request for Production of Documents, the Plaintiff requested the Defendant
5 produce, *inter alia*, “[a]ll documents which the Government relied upon in support of its
6 decision to utilize a singer provider for GGWAN services,” and “[a]ll documents, reports,
7 memoranda and studies used in support of drafting the specifications for Part E, Bid Form 11 of
8 IFB GSA064-11.” The Government responded, respectively, “The documents that the
9 Government relied upon are contained in the procurement record,” and “No such documents
10 exist.” Pl.’s Ex. B 2-3, May 15, 2014.
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12 The time for discovery was subsequently extended at a hearing on February 14, 2014, to
13 allow for the deposition of the Hawaii-resident Dr. Okamura. This deposition took place on
14 March 31 through April 2. During the deposition, Dr. Okamura discussed work he had done
15 preparing the drafts for the IFB, meetings he had attended with vendors and Government of
16 Guam employees, and correspondence with Ed Cruz, including sending documents and making
17 phone calls, among other matters.
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19 Immediately following Dr. Okamura’s deposition, the Plaintiff’s counsel conferred with
20 the Defendant’s counsel about the documents mentioned in the deposition testimony. The
21 Defendant’s counsel said he would check with Anita Cruz of GSA and Joey Manibusan of BIT.
22 However, when no response was forthcoming, on April 7, 2014 the Plaintiff’s counsel sent the
23 Defendant’s counsel a Local Rule 37.1 Stipulation of Counsel. This document and the
24 Plaintiff’s Motion for Sanctions were filed with the Court on April 9, 2014. The Motion for
25 Sanctions requested, in the alternative, a default judgment in the Plaintiff’s favor, a favorable
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1 inference that the evidence is adverse to GSA's interests, production of the evidence, vacatur of
2 the trial date, and an award of fees and costs incurred. The Defendant filed an Opposition to the
3 Plaintiff's motion and a Cross-Motion for Rule 11 Sanctions on May 1, 2014. The Plaintiff's
4 Reply was filed on May 15, 2014. An evidentiary hearing took place on June 18, 2014. At the
5 hearing, the Court agreed to admit the transcript of Dr. Okamura's deposition testimony into
6 evidence, and this document was filed on June 19. The court took the matter under advisement.
7

8 DISCUSSION

9 I. Discovery in a Civil Action

10 Under the Guam Procurement Law, an actual or prospective bidder, offeror, or
11 contractor who is aggrieved in connection with the method of source selection, solicitation, or
12 award of a contract, may protest to the Chief Procurement Officer. 5 GCA § 5425(a) (2005). An
13 administrative appeal is available before the Public Auditor. 5 GCA § 5425(e) (2005). The
14 resulting decision of the Public Auditor is final unless the person adversely affected by the
15 decision commences an action in the Superior Court in accordance with § 5480. 5 GCA §
16 5425(f) (2005).
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19 5 GCA § 5480(a) provides that the Superior Court of Guam has jurisdiction over an
20 action between the Territory of Guam and a bidder, offeror, or contractor, to determine whether
21 a solicitation or award of a contract is in accordance with law. 5 GCA § 5480(a) (2005); see
22 also 5 GCA § 5707(a) (2005) (granting a right of appeal from a decision by the Public Auditor
23 to the Superior Court in accordance with 5 GCA §§ 5480-81). Such jurisdiction extends to
24 actions at law or in equity, whether for money damages, or for declaratory or equitable relief. 5
25 GCA § 5480(a) (2005). The Supreme Court has interpreted the term "action" in § 5480(a) to
26 refer to a civil action. See Town House Dep't Stores, Inc. v. Dep't of Educ., 2012 Guam 25 ¶¶
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1 28-29. Accordingly, in § 5480 actions to determine the validity of a Government of Guam
2 procurement, the procedures for civil actions are appropriate, and writ procedures are not
3 appropriate. See id.

4 While the Guam Procurement Law makes an action in the Superior Court available to a
5 bid contractor aggrieved by a Public Auditor's decision, the Superior Court must show
6 deference to the Public Auditor:

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8 Any determination of an issue or a finding of fact by the Public Auditor shall be
9 final and conclusive unless arbitrary, capricious, fraudulent, clearly erroneous, or
10 contrary to law. Any decision of the Public Auditor, including any determination
11 regarding the application or interpretation of the procurement law or regulations,
12 shall be entitled to great weight and the benefit of reasonable doubt, although it
13 shall not be conclusive on any court having competent jurisdiction.

14 5 GCA § 5704 (2005).

15 Although 5 GCA § 5707(a) terms the right of action before the Superior Court an
16 "appeal," the Supreme Court has interpreted § 5480(a) to mean that a bidder may institute a
17 civil action. 5 GCA § 5707(a) (2005); 5 GCA § 5480(a); Town House Dep't Stores, Inc. v.
18 Dep't of Educ., 2012 Guam 25 ¶¶ 28-29. Discovery in a civil action is governed by Guam Rules
19 of Civil Procedure 26-37. GRCP 26-37. In particular, Rule 26(b) sets out the general scope and
20 limits of discovery. GRCP 26(b). Rule 26(b)(1) provides that, "[p]arties may obtain discovery
21 regarding any matter, not privileged, that is relevant to the claim or defense of any party."
22 GRCP 26(b)(1). The relevancy standard provides that, "[r]elevant information need not be
23 admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of
24 admissible evidence." *Id.* That is to say, a party may discover material that is not itself
25 admissible evidence, as long as the discovery of that material may reasonably lead to other
26 materials that are admissible.
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1 A court may limit the scope of discovery, however, under Rule 26(b)(2)(i)-(iii). Under
2 Rule 26(b)(2)(i), a court may disallow discovery that is unreasonably cumulative or that could
3 be obtained more easily or cheaply. GRCP 26(b)(2)(i). Under Rule 26(b)(2)(ii), a court may
4 disallow discovery if the party seeking it has already had ample opportunity by discovery in the
5 action to obtain the information. Under Rule 26(b)(2)(iii), a court may disallow discovery if the
6 burden or expense of it outweighs the benefit of the information. GRCP 26(b)(2)(iii).
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8 Although this case is a civil action, governed by the Guam Rules of Civil Procedure,
9 including its discovery rules, this Court has been mindful of the fact that an extensive record
10 was produced before the Public Auditor. In its Decision and Scheduling Order of December 3,
11 2013, pursuant to its authority under Rule 26(b)(2), the Court limited discovery in this case to
12 matters that both were relevant to the central question of whether, “the Government’s
13 preference for a single provider should have been outweighed by the public’s interest in
14 minimizing the cost to the public fisc,” and also were not developed in the administrative
15 record. GRCP 26(b)(2); Decision and Scheduling Order 3, Dec. 3, 2013. These limitations were
16 above and beyond the limitations to discovery that apply to all civil actions.
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19 **II. The Procurement Record and Discovery Efforts**

20 5 GCA § 5249, a section of the Guam Procurement Law, requires procurement officers
21 to maintain a procurement record with certain specified contents. The statute reads as follows:
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Each procurement officer shall maintain a complete record of each procurement.

The record shall include the following:

23 (a) the date, time, subject matter and names of participants at any meeting
24 including government employees that is in any way related to a particular
25 procurement;

26 (b) a log of all communications between government employees and any member
27 of the public, potential bidder, vendor or manufacturer which is in any way
28 related to the procurement;

1 (c) sound recordings of all pre-bid conferences; negotiations arising from a
2 request for proposals and discussions with vendors concerning small purchase
procurement;

3 (d) brochures and submittals of potential vendors, manufacturers or contractors,
4 and all drafts, signed and dated by the draftsman, and other papers or materials
used in the development of specifications; and

5 (e) the requesting agency's determination of need.

6 5 GCA § 5249 (2005).

7 A procurement record was developed in this case and submitted to the Public Auditor,
8 and was declared to be complete by Anita Cruz, the Buyer Supervisor assigned to the bid. Decl.
9 of Anita Cruz, Def.'s Ex. 3, pp. 1-2, May 1, 2014. Robert Kono, Administrative Counsel at
10 GSA, declared that he checked and double-checked the GSA's documents for this procurement
11 and could not find any documents that were not included in the procurement record. Decl. of
12 Robert Kono, Def.'s Ex. 2, p. 2, May 1, 2014. At the evidentiary hearing on June 18, 2014, Mr.
13 Kono testified that all documents submitted by BIT to GSA had been included in the
14 procurement record. R. Log 8, Jun. 18, 2014. When asked by the Defendant's counsel if he had
15 ever seen a procurement record as large as this one, Mr. Kono responded in the negative. Id. On
16 the stand, Ms. Cruz also stated that the procurement record was very large, that she was not
17 hiding documents and had not instructed her staff to do so, and that everything GSA had been
18 given was in the procurement record. Id. at 13.

19 However, the Plaintiff argues that the declarations and hearing testimony about the
20 completeness of the procurement record are contradicted by Dr. Okamura's deposition
21 testimony, which mentions certain documents that are not in the procurement record and certain
22 events that are not documented in the procurement record. Dr. Okamura testified that during his
23 work on behalf of the Government of Guam, he had worked on preparing drafts for the IFB, met
24 with different vendors providing telecommunications services on Guam, and met with
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1 employees of the GSA. Dep. of Okamura, 18-19. He had met with Ed Cruz in developing
2 specifications for the GGWAN IFB as well as other aspects of IFB GSA 064-11, and
3 corresponded with Ed Cruz by telephone and sent documents back and forth with him. Id. at 32-
4 35. Dr. Okamura stated that while he still had some bid drafts, the best person to ask for them
5 would be Ed Cruz. Id. at 20-21.

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7 Before Dr. Okamura's deposition was taken, the Plaintiff made a Request for Production
8 of Documents to the Defendant, in January 2014. The Plaintiff requested the Defendant
9 produce, inter alia, "[a]ll documents which the Government relied upon in support of its
10 decision to utilize a singer provider for GGWAN services," and "[a]ll documents, reports,
11 memoranda and studies used in support of drafting the specifications for Part E, Bid Form 11 of
12 IFB GSA064-11." The Government responded, respectively, "The documents that the
13 Government relied upon are contained in the procurement record," and "No such documents
14 exist." Pl.'s Ex. B 2-3, May 15, 2014.

15
16 The Plaintiff argues that the Defendant has failed to produce relevant discovery
17 materials and failed to include required documentation in the procurement record. The materials
18 that the Plaintiff argues are both responsive to its requests for production and not included in the
19 procurement record include:
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- 21 1) Minutes of meetings attended by Dr. Okamura and other persons including Beningo
22 Camacho, Ed Cruz, GSA staff, and vendor representatives. Pl.'s Reply, 7-8, May 15,
23 2014; Dep. of Okamura, 18-19.
- 24 2) Communications and a communications log between Dr. Okamura and other persons
25 including Ed Cruz and vendor representatives; Pl.'s Reply, 8-9, May 15, 2014; Dep.
26 of Okamura, 32-35.
- 27 3) Drafts of the IFB worked on by Dr. Okamura, dated and signed by him. Pl.'s Reply,
28 9-10, May 15, 2014; Dep. of Okamura, 20-21.
- 4) Other papers or materials used in the development of specifications. Pl.'s Reply, 10-
11, May 15, 2014; Dep. of Okamura, 20-21, 32.

III. The Incompleteness of the Procurement Record

A. Meeting Records

The Plaintiff asserts that the Defendant has neglected to include in the procurement log or otherwise provide the minutes of meetings attended by Dr. Okamura that were relevant to the development of the bid specifications for this procurement. Pl.'s Reply 7-8, May 15, 2014. The statute requires that the procurement record contain, "the date, time, subject matter and names of participants at any meeting including government employees that is in any way related to a particular procurement." 5 GCA § 5249(a). In his deposition testimony, Dr. Okamura stated that he attended meetings with Beningo Camacho, Ed Cruz, GSA staff, and vendor representatives. Dep. of Okamura, 18-19. At the evidentiary hearing on June 18, Ed Cruz testified that he attended "more than twenty" meetings where Dr. Okamura participated with regard to the IFB, that he was not aware if anyone was assigned to take meeting minutes, and that he was not asked to provide a record of all his meetings. R. Log 3, Jun. 18, 2014.

5 GCA § 5249(a) requires the procurement record to include, "the date, time, subject matter and names of participants at any meeting including government employees that is in any way related to a particular procurement." 5 GCA § 5249(a) (2005). The Plaintiff argues that this subsection requires inclusion of the minutes of the meetings in the procurement record. Pl.'s Reply 8, May 15, 2014. The Court does not need to determine if the precise level of detail indicated by the statutory term "subject matter" requires meeting minutes, or some other sort of record. Because the evidence shows that many meetings that are, "in any way related to a particular procurement" are not mentioned at all in the procurement record, the Court finds that the procurement record is materially incomplete under the terms of § 5249(a).

B. Communications, Drafts and Other Materials

1 5 GCA § 5249(b) requires the procurement record to include, “a log of all
2 communications between government employees and any member of the public, potential
3 bidder, vendor or manufacturer which is in any way related to the procurement.” 5 GCA §
4 5249(b) (2005). Another subsection, 5 GCA § 5249(d), requires, “brochures and submittals of
5 potential vendors, manufacturers or contractors, and all drafts, signed and dated by the
6 draftsman, and other papers or materials used in the development of specifications.” 5 GCA §
7 5249(d) (2005). The parties dispute whether or not emails are required to be included. Pl.’s Mot.
8 11, Apr. 9, 2014; Def.’s Opp. 10, May 1, 2014. However, the Defendant makes the point that
9 there is a more specific statutory section that requires emails by its terms, 5 GCA § 5247.1:
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11 All incoming and outgoing electronic mail (email) correspondences pertaining to
12 matters related to the procurement of goods and services as governed by this
13 Chapter shall be retained for a period of not less than five (5) years. Such
14 electronic mail (email) correspondences may be used for evidentiary purposes in
15 the appellate procedures contained in this Chapter.

16 5 GCA § 5247.1; Def.’s Opp. 10, May 1, 2014. This statute only came into effect in 2013, after
17 the work developing the IFB had long been completed. 5 GCA § 5247.1; Def.’s Opp. 10, May
18 1, 2014.

19 But regardless of the extent of the Defendant’s obligations, if any, to retain and disclose
20 emails at the time, the evidence has revealed other shortfalls in the Defendant’s compliance with
21 § 5249(b). At the evidentiary hearing Ed Cruz, formerly of BIT, said that whenever he was
22 asked for copies of communications regarding the IFB he would comply with the request. R.
23 Log 3, Jun. 18, 2014. Robert Kono, Administrative Counsel for GSA, and Anita Cruz, the
24 Buyer Supervisor assigned to this procurement project by GSA, both testified that the GSA
25 gave all the documents it had, and if any documents were not included the GSA did not possess
26 them. Id. at 8, 12. However, Ms. Cruz did mention that she did not request information, from Ed
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1 Cruz or Dr. Okamura, including their correspondences or drafts, but instead just included what
2 she had been provided. *Id.* at 12, 13. Nor did Mr. Kono request any documents from Ed Cruz or
3 Dr. Okamura. *Id.* at 9. Mr. Kono also testified that under 5 GCA § 5150, when an award is
4 estimated to exceed five hundred thousand dollars (\$500,000), the Attorney General's office
5 acts as legal advisor during all stages of the solicitation and procurement process, and Mr. Kono
6 indicated that he did not believe it possible that other government agencies could act negligently
7 if they acted under advice of counsel. *See id.* at 9.

9 When Ms. Anita Cruz, the Buyer Supervisor assigned to this procurement project by
10 GSA, testified, the Court asked her several questions *sua sponte*. R. Log. 13-14, Jun. 18, 2014.
11 When asked about a letter received by GSA from the Governor's Chief of Staff, Ms. Cruz was
12 unable to recall when the letter had been sent, but said the date should be in the communication
13 log. *Id.* at 14. Upon further questioning, however, she was unable to testify that a
14 communications log had been created for the procurement record, in contradiction to the
15 Government's duties under 5 GCA § 5249. *Id.*

17 Dr. Okamura testified in his deposition that part of his work included preparing IFB
18 drafts. Dep. of Okamura, 18-19. Ed Cruz testified that "maybe four or five drafts" were made by
19 Dr. Okamura and his team. R. Log 4, Jun. 18, 2014. Robert Kono testified that whatever in the
20 way of drafts was provided to GSA was included in the procurement record, but he was not sure
21 how many. *Id.* at 8. On redirect examination, Ed Cruz did testify that a document included in
22 the procurement record was an IFB draft prepared by Dr. Okamura, but that the document was
23 not dated or signed by Dr. Okamura. R. Log 11, Jun. 18, 2014; Def.'s Ex. 19. Mr. Cruz then
24 said that the document does "have the author." R. Log 11, Jun. 18, 2014. However, upon its
25 own review of Exhibit 19, the Court could find no identification of the author of the document
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1 or the date on which it was produced. Ms. Anita Cruz also identified the same document as an
2 unsigned and undated IFB draft. Id. at 12.

3 The Procurement Law also requires the Government to include "other papers or
4 materials used in the development of specifications." 5 GCA § 5249(e). Ed Cruz did identify a
5 document included in the procurement record written by Dr. Okamura named Assessment of
6 Telecommunications Services in the Government of Guam. R. Log 3, Jun. 18, 2014. Mr. Cruz
7 also stated that BIT used historical data based on the Government's previous attempts to
8 contract for improved telecommunications services, and gathered information from government
9 agencies to draft the specifications. Id. at 4. Likewise, Dr. Okamura testified that generating the
10 IFB required preliminary work gathering and analyzing data on the current services that were
11 being provided to the Government of Guam and looking at the capabilities of the various
12 telecommunications providers in Guam. Dep. of Okamura, 17-18. These documents were used
13 to generate the Assessment, but were not themselves included in the procurement record.
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16 Taken together, the testimony shows a lack of accountability from the three relevant
17 government agencies, BIT, GSA, and the AG's office, and a failure to work collaboratively to
18 ensure that the statute was complied with, including not only GSA turning over the documents it
19 had on hand to create the procurement record, but also ensuring that all required documentation
20 was created in the first place, retained, and transmitted to GSA. The testimony indicates a
21 specific failure to include a communications log in the procurement record, in direct
22 contravention of the statutory mandate. The testimony also shows noncompliance with the
23 statutory requirement to include all drafts and to ensure that they are dated and signed by the
24 draftsman. Likewise, the testimony shows that research documents relating to the needs of the
25 Government of Guam and the capabilities of telecommunications services providers on Guam,
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1 used to help develop the telecommunications IFB, were not included in the procurement record.

2 In addition to the material incompleteness of the procurement record under the terms of §
3 5249(a), as discussed above, the Court also finds that the procurement record is materially
4 incomplete under the terms of § 5249(b), (d), and (e).

5 IV. The Government's Defenses

6 The Government of Guam makes several arguments against the Plaintiff's Motion for
7 sanctions, arguing that the procurement record is voluminous and thorough and that every
8 document that GSA has was given to GTA's counsel, that the Plaintiff's requests for production
9 do not extend to the documents the Plaintiff now seeks and that had such a discovery request
10 been made it would have exceeded the limitations allotted by the Court, and that the time to
11 contest the completeness of the procurement record was before the Public Auditor, not before
12 this Court. Def.'s Opp. 2-5, May 1, 2014.

13 A. Size of the Procurement Record

14 The Defendant's counsel notes the large size of the procurement record, which is
15 "approximately 11½ inches tall, and consists of more than three thousand three hundred fifty
16 (3,350) pages." Def.'s Opp. 5, May 1, 2014. Moreover, Defendant's counsel has "never seen a
17 procurement record as voluminous as the one in this procurement bid." *Id.*

18 While the Court appreciates the great amount of time and effort that no doubt was
19 required to generate this procurement record, neither time and effort nor size are the criteria for
20 determining whether a procurement record is complete under the Guam Procurement Law.
21 Instead, the statute demands the creation of the procurement record, and the statute also
22 specifies what must be included in it: "Each procurement officer shall maintain a complete
23 record of each procurement. The record shall include the following..." 5 GCA § 5249 (2005).
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1 Under the plain language of the statute, the procurement record is not complete unless it
2 includes the enumerated list of required documents. Nor does the assertion that “there was and
3 is nothing more GSA can give to GTA,” even if true, necessarily mean that the record is
4 complete. There could be many reasons for required documents to not be included in the
5 procurement record. It is not the reason why documents are not included in the procurement
6 record that makes it complete or incomplete, but simply the fact of their inclusion or lack
7 thereof. As ruled above, the record is not complete, because it does not contain all the
8 documents required by statute.
9

10 **B. Plaintiff’s Right to Make the Requests for Production**

11 The Defendant argues that the requests for production, being limited to GGWAN
12 services and Part E, Bid Form 11, do not by their terms make a broad request for
13 correspondence and documents between Dr. Okamura and GSA, as much of Dr. Okamura’s
14 work and correspondence referred to other parts of the IFB. The Defendant also argues that the
15 Court’s Decision and Scheduling Order of December 3, being limited to matters that were both
16 relevant to whether or not “the Government’s preference for a single provider should have been
17 outweighed by the public’s interest in minimizing the cost to the public fisc,” and also were not
18 developed in the administrative record, means that even if the Plaintiff had made such a broad
19 request, that request would be improper and the documents would not be discoverable.
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22 These arguments mistake the meaning of the Court’s limitation of discovery in its
23 December 3, 2013 order. As stated above, a procurement proceeding before the Superior Court
24 pursuant to 5 GCA § 5480 is a civil action. See 5 GCA § 5480(a); Town House Dep’t Stores,
25 Inc. v. Dep’t of Educ., 2012 Guam 25 ¶¶ 28-29. This means that discovery under the Guam
26 Rules of Civil Procedure is appropriate. Decision and Scheduling Order 2, Dec. 3, 2014
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1 However, the Court limited discovery pursuant to its Rule 26(b)(2) authority. *Id.* This was
2 because the Public Auditor had already developed a significant administrative record. The Court
3 allowed additional discovery to supplement the discovery conducted before the Public Auditor,
4 but acknowledged that discovery should not be duplicative of the discovery conducted before
5 the Public Auditor. *See id.* at 3. However, the allegation of the Plaintiff is that the documents it
6 seeks were not included in the procurement record or presented to the Public Auditor, in
7 contravention of the Government's duty to do so. Pl.'s Reply 11-13, May 15, 2014. When the
8 Court ordered that any supplemental discovery should not duplicate the original discovery that
9 had already been rendered, the Court did not erase the Government's obligation to comply with
10 the Guam Procurement Law, nor did the Court forbid the Plaintiff from seeking any discovery
11 materials that the Plaintiff was previously owed and yet had never been provided. To whatever
12 extent, if any, such materials should have been included in the procurement record, but were
13 not, the Court's December 3, 2013 Decision and Scheduling Order did not forbid the Plaintiff
14 from seeking them.

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17 Nor was this Court's determination of what was relevant to the action as narrow as the
18 Defendant emphasizes. The Court wrote the following:

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20 It appears to the Court that the underlying issue in this case is whether the
21 Government's preference for a single provider should have been outweighed by the
22 public's interest in minimizing the cost to the public fisc. Factual evidence helpful
23 to the Court in resolving this issue includes evidence pertaining to the costs,
24 financial and administrative, of establishing and maintaining the single-provider
25 network and GTA's proposed dual-provider network, and the facts and rationale
underpinning the Government's preference for a single provider.

26 Decision and Scheduling Order 3, Dec. 3, 2013.

27 Moreover, the relevancy burden in Rule 26 is that the sought material does not
28 necessarily need to be admissible on its own, just that it must appear to be "reasonably

1 calculated to lead to the discovery of admissible evidence.” GRCP 26(b)(1); People of Guam v.
2 Orallo, 2004 Guam 5 ¶ 19 (affirming that inadmissible evidence may be discoverable); see also
3 Shoen v. Shoen, 5 F.3d 1289, 1292 (9th Cir 1993) (arguing that the analogous Federal Rule
4 provision creates a broad right of discovery because “wide access to relevant facts serves the
5 integrity and fairness of the judicial process by promoting the search for the truth”). The Court
6 finds it reasonably likely that the documents that were required to be included in the
7 procurement record bear on the issues of the relative weights and merits of a single-provider
8 versus a dual-provider network. Even if it so happens that these documents do not relate to this
9 question, so long as it is reasonably calculated that the discovery materials will lead to other
10 discovery materials that are relevant, then the Plaintiff’s request is permitted under Guam Rule
11 of Civil Procedure 26(b)(1). The Court finds this to be the case. The Defendant has both an
12 independent statutory obligation under 5 GCA § 5249 to disclose correspondences of Dr.
13 Okamura’s, and also a Rule 26(b)(1) obligation, pursuant to the Plaintiff’s requests for
14 production of documents relating to the Government’s decision making and bid development
15 processes for GGWAN services and Part E, Bid Form 11 of IFB GSA064-11.
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19 C. Laches

20 Lastly, the Defendant argues that the time for the Plaintiff to raise any objections to the
21 completeness of the procurement record was before the Public Auditor, and not before this
22 Court. Def.’s Opp. 4, May 1, 2014; R. Log 2, Jun. 18, 2014. To the extent the Defendant argues
23 that new information cannot be discovered and introduced before this Court, the Court has
24 already ruled against the Defendant. See supra at 6-7; see also Decision and Scheduling Order
25 2, Dec. 3, 2014. Otherwise, the Defendant makes an argument based on the equitable doctrine
26 of laches. “Laches is an equitable time limitation on a party’s right to bring suit, resting on the
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1 maxim that ‘equity aids the vigilant, not those who sleep on their rights.’” Duenas v. Guam
2 Election Comm’n, 2008 Guam 1 ¶ 16 (quoting Magic Kitchen, LLC v. Good Things Int’l Ltd.,
3 63 Cal. Rptr. 3d 713, 723 (Cal. Ct. App. 2007) (citation omitted)). Laches applies in cases of
4 “(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice
5 against the party asserting the defense.” Guam Election Comm’n v. Responsible Choices for All
6 Adults Coal., 2007 Guam 20 ¶ 77; Duenas, 2008 Guam 1 ¶ 17. This means that laches protects
7 against a party’s “inexcusable delay which prejudices the [opposing party’s] ability to respond.”
8 May v. People, 2005 Guam 17 ¶ 27.

10 Before the present action was initiated pursuant to 5 GCA § 5480, the procurement
11 dispute was under the jurisdiction of the Public Auditor. The Public Auditor does have the
12 jurisdiction to order certain evidence-gathering and disclosure measures: “The Public Auditor
13 shall have the power to compel attendance and testimony of, and production of documents by
14 any employee of the government of Guam, including any employcc of any autonomous agency
15 or public corporation.” 5 GCA § 5702 (2005); see also 2 GAR §12109 (setting out in greater
16 detail the authority of the Public Auditor to compel attendance, testimony, and production of
17 evidence). However, this statutory authority does not reach, at least not in sufficiently clear
18 terms, non-employee consultants of the Government of Guam who are not present in Guam,
19 regardless of the importance of their testimony. See 5 GCA § 5702 (2005). Dr. Okamura is a
20 resident of Hawaii and an employee of the University of Hawaii, with whom the Government of
21 Guam contracted to develop the bid specifications for IFB GSA 064-11.

25 The Court, applying the Supreme Court’s holding in Town House Dep’t Stores, Inc. v.
26 Dep’t of Educ., determined that as a civil action, this suit was governed by the Guam Rules of
27 Civil Procedure. See Town House Dep’t Stores, Inc. v. Dep’t of Educ., 2012 Guam 25 ¶¶ 28-29;
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1 Decision and Scheduling Order 2, Dec. 3, 2014. Accordingly, the Court authorized discovery,
2 though the Court limited that discovery pursuant to its Rule 26(b)(2) authority. Decision and
3 Scheduling Order 2, Dec. 2-3, 2014. The Court subsequently extended the discovery deadline so
4 that the deposition of Dr. Okamura could occur. R. Log, Feb. 14, 2014. At this deposition, the
5 Plaintiff's counsel learned the information that has subsequently led to the present motion. Pl.'s
6 Mot. 3, Apr. 9, 2014; Pl.'s Reply 6-7, May 15, 2014; see Dep. of Okamura. At a hearing on July
7 9, 2014, counsel for the Plaintiff informed the Court that the process by which it was able to
8 compel Dr. Okamura's deposition was by filing a special proceeding with the Hawaii Superior
9 Court, and the slow pace of this procedure created the need for the extension of the discovery
10 period until Dr. Okamura's deposition could take place on March 31 and April 1, 2014. See R.
11 Log, Jul. 9, 2014 (in the context of a dispute over whether Dr. Okamura's deposition transcript
12 should be admitted into evidence for a prospective bench trial, or whether his live or televideo
13 testimony was required). Under the circumstances of this case, it cannot be said that the failure
14 to acquire evidence from Dr. Okamura at the proceeding before the Public Auditor amounts to a
15 lack of diligence by the Plaintiff.
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19 As stated above, the appropriate procedure in a § 5480 action is not to hold a purely on-
20 the-record review using the facts found by the Public Auditor, but rather is to hold a civil action,
21 wherein discovery under the Guam Rules of Civil Procedure is appropriate. As is contemplated
22 by the discovery mechanism, at the deposition of Dr. Okamura, the Plaintiff's counsel learned
23 information that was not previously known by the Plaintiff and not included in the procurement
24 record. Far from the Plaintiff sitting on its rights, the Plaintiff's counsel immediately asked the
25 Defendant's counsel about the documents to which Dr. Okamura referred. Pl.'s Reply 3, May
26 15, 2014. Being unable to resolve the matter without Court intervention, the Plaintiff brought
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1 the matter to the Court's attention on April 9, 2014, eight days after the last day of the
2 deposition. Pl.'s Mot., Apr. 9, 2014. The Plaintiff was not able to seek and learn the relevant
3 information at the proceeding before the Public Auditor, has behaved diligently before this
4 Court, and has not caused any unreasonable delay that has prejudiced the Defendant. The
5 Defendant's laches defense must fail.

6 7 V. Remedy

8 In its Motion for Sanctions, the Plaintiff requested, in the alternative, a default judgment
9 in the Plaintiff's favor, an inference that the evidence is adverse to GSA's interests, production
10 of the evidence, vacatur of the trial date, and an award of fees and costs incurred. Pl.'s Mot. 1,
11 Apr. 9, 2014. The Plaintiff moves for sanctions against the Defendant under Guam Rule of Civil
12 Procedure 37, especially Rule 37(c)(1) relating to a failure to make required Rule 26
13 disclosures, as well as moving for personal sanctions against the Defendant's counsel under
14 Rules 11 and 26, addressed below. See id. at 5-9.

15
16 Guam Rule of Civil Procedure allows the issuance of sanctions against a party that has
17 not complied with its discovery obligations. GRCP 37. Depending on the relevant subsection of
18 the rule, permitted sanctions include, *inter alia*, an order compelling disclosure or discovery,
19 monetary expenses payable by the party or party's attorney, contempt of court, default
20 judgment, and other appropriate sanctions. GRCP 37(a), (a)(4)(A), (b)(1), (b)(2)(C), (c)(1).
21 Trial courts have broad discretion to issue Rule 37 sanctions for discovery violations, especially
22 under Rule 37(c)(1). See Adams v. Duenas et al., 1998 Guam 15 ¶ 10 (referring to discovery
23 sanctions in general); see Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1106
24 (9th Cir. 2001) (referring to Federal Rule 37(c)(1) in particular). Courts are not required to find
25 bad faith or callous disregard of the discovery rules in order to issue Rule 37(c)(1) sanctions.
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1 Southern States Rack and Fixture, Inc. v. Sherwin-Williams Co., 318 F.3d 592, 596 (4th Cir.
2 2003). However, issuing a default judgment as a discovery sanction is not as open to the court's
3 discretion. See Adams v. Duenas et al., 1998 Guam 15 ¶ 10 (describing default judgments
4 awarded as sanctions for discovery violations as "drastic sanctions" such that the range of the
5 trial court's discretion must be narrowed); see also R. & R Sails, Inc. v. Insurance Co. of
6 Pennsylvania, 673 F.3d 1240, 1247 (9th Cir. 2012) (requiring a federal district court to find that
7 a party's discovery noncompliance involved willfulness, fault, or bad faith before dismissing a
8 claim or granting a remedy that amounts to dismissing a claim).

9
10 This court may compel a party to disclose discovery materials and discovery responses.
11 GRCP 37(a). However, in this case the Court is not convinced that a further production order
12 would significantly remedy the incompleteness of the procurement record. Buyer Supervisor
13 Anita Cruz and Administrative Counsel Robert Kono of GSA have both declared and testified
14 on the stand that GSA has no further documents to produce. Def.'s Opp. Ex. 2, Decl. of Kono,
15 Ex. 3, Decl. of Cruz, May 1, 2014; R. Log 8, 13, Jun. 18, 2014. The evidentiary hearing on June
16 18 revealed that many documents required to be in the procurement record under 5 GCA § 5249
17 were either not generated or not requested by GSA. See R. Log passim, Jun. 18, 2014.
18 Furthermore, additional delay would be detrimental to the public policy interest in expeditious
19 resolution of procurement disputes. See 5 GCA § 5701 (2005) (directing the Public Auditor to
20 adopt rules of procedure which, to the fullest extent possible, will provide for the expeditious
21 resolution of procurement controversies); see also 2 GAR § 12101. This public policy detriment
22 is likely to outweigh what limited benefit could come from a production order.
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26 This Court has jurisdiction "to determine whether a solicitation or award of a contract is
27 in accordance with the statutes, regulations, and the terms and conditions of the solicitation." 5
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1 GCA § 5480(a). In making this determination, the Procurement Law instructs the Court to be
2 deferential to the ruling of the Public Auditor:

3 Any determination of an issue or a finding of fact by the Public Auditor shall be
4 final and conclusive unless arbitrary, capricious, fraudulent, clearly erroneous, or
5 contrary to law. Any decision of the Public Auditor, including any determination
6 regarding the application or interpretation of the procurement law or regulations,
7 shall be entitled to great weight and the benefit of reasonable doubt, although it
8 shall not be conclusive on any court having competent jurisdiction.

9 5 GCA § 5704 (2005). Any judgment in the Plaintiff's favor would overturn the ruling of the
10 Public Auditor, a course of action that the statute only permits the Superior Court to take under
11 limited conditions. The grant of a default judgment as a discovery sanction would therefore
12 grant an extreme remedy, and do so without the statutorily required finding that the Public
13 Auditor made a determination of an issue or a finding of fact that was arbitrary, capricious,
14 fraudulent, clearly erroneous, or contrary to law.

15 On the record before it, the Court is not able to make a determination that the Public
16 Auditor's findings of fact for Docket OPA-PA-12-018, in its Consolidated Decisions of March
17 6, 2013, were arbitrary, capricious, fraudulent, clearly erroneous, or contrary to law. However,
18 the discovery authorized by this Court has uncovered information not before the Public Auditor
19 that, had it been known at the time, may have had a material effect on the Public Auditor's fact-
20 finding. The Court concludes that the currently standing decision by the Public Auditor was not
21 made in light of all the relevant evidence.

22 Moreover, 5 GCA § 5250 states that: "No procurement award shall be made unless the
23 responsible procurement officer certifies in writing under penalty of perjury that he has
24 maintained the record required by § 5249 of this Chapter and that it is complete and available
25 for public inspection. The certificate is itself a part of the record." 5 GCA § 5250 (2005). Such a
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1 certification has been made, but proceedings before this Court have revealed that the
2 procurement record was not, in fact, complete. This Court is required to give “great weight and
3 the benefit of reasonable doubt” to “any determination regarding the application or
4 interpretation of the procurement law,” but with regard to the key question of the interpretation
5 and application of § 5250 to a case with an incomplete procurement record, the Public Auditor
6 has not yet made a determination, because it was new information discovered before this Court
7 that revealed that the procurement record was incomplete.
8

9 The Court is unaware of any Guam Supreme Court guidance on the appropriate action
10 for the Superior Court to take in such a situation. However, Guam’s Procurement Law is based
11 in large part on the American Bar Association’s Model Procurement Code. 5 GCA Ch. 5,
12 introductory cmt. (2005). Approximately half of United States jurisdictions likewise use the
13 Model Procurement Code as a template for their own procurement statutes. See National
14 Association of State Procurement Officials, 2011-2012 NASPO Survey of State Procurement
15 Practices 1 (2012). Such jurisdictions generally make vacatur of an administrative procurement
16 ruling and remand to the appropriate decision-maker a permissible remedy that may be ordered
17 by a reviewing court. See, e.g. Arakaki v. State, Dep’t of Accounting and General Services, 952
18 P.2d 1210, 1214 (Haw. 1998) (vacating and remanding an administrative hearing officer’s
19 decision because of a clearly erroneous finding of fact); see also Alexander & Alexander, Inc. v.
20 State, 596 So.2d 822, 828 (La. Ct. App. 1991) (voiding the previous proceeding and remanding
21 the case to the Chief Procurement Officer upon finding that the state government had materially
22 violated the Procurement Code).
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26 The Court determines that it is neither able to affirm or reverse the Public Auditor’s
27 ruling, as that previous ruling was based on what has now been found to be materially
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1 incomplete information. Therefore, the Court hereby VACATES the Public Auditor's Decision
2 of March 6, 2013 in the case of OPA-PA-12-018. The Public Auditor is hereby ORDERED to
3 reopen that case and, in light of the evidence revealed in this civil action, issue a new Decision,
4 finding the relevant facts and interpreting and applying the Guam Procurement Law. The Public
5 Auditor's new Decision shall not be inconsistent with this Decision and Order. The trial date set
6 for August 18, 2014 is hereby VACATED. This Court's jurisdiction is hereby STAYED during
7 the pendency of the renewed proceeding before the Public Auditor.
8

9 VI. Costs and Attorney's Fees; Defendant's Counsel's Due Diligence

10 Under Guam Rule of Procedure 37(a)(4), if a discovery motion is granted, the court shall
11 require the losing party or losing party's counsel to pay the moving party the reasonable
12 expenses incurred in making the motion, including attorney's fees. GRCP 37(a)(4). However,
13 the court shall not award costs and attorney's fees if the movant did not make a good faith effort
14 to obtain the disclosure or discovery without court action, if the nondisclosure was substantially
15 justified, or if other circumstances make an award of expenses unjust. *Id.* The Court construes
16 the Plaintiff's Motion for Sanctions to include a request for a Rule 37(a) order compelling
17 discovery with an attendant request for costs and attorney's fees. *See* Pl.'s Mot. 1, Apr. 9, 2014
18 (requesting production of evidence and an award of fees and costs). Moreover, the Plaintiff's
19 motion also includes a request for personal sanctions against the Defendant's counsel under
20 Guam Rules of Civil Procedure 11 and 26(g). Pl.'s Mot. 6-9, Apr. 9, 2014. The basis for the
21 motion for personal sanctions was alleged suppression and/or spoliation of evidence by
22 Defendant's counsel. *Id.* at 6. The Court shall address the personal sanctions first.
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26 When the Defendant filed its opposition and cross-motion, the Defendant's Counsel
27 included a declaration, and a series of attachments, detailing the work he performed to comply
28

1 with the Government's discovery obligations. Def.'s Opp. Ex. 1, Attachments A-K. At the
2 hearing on June 18, 2014, many of these documents, as well as other documents from the
3 procurement record, were introduced into evidence for the limited purpose of establishing the
4 defense counsel's due diligence in complying with discovery obligations. R. Log 5, 6, 9, 14,
5 Jun. 18, 2014.

6
7 Upon review of these documents and the hearing testimony, the Court concludes that the
8 Defendant's counsel engaged in extensive efforts to perform his due diligence obligations, and
9 that although not all documentation required to be included in the procurement log was indeed
10 included, and although the absent documents have also not been produced in discovery, the
11 Defendant's counsel has not committed a sanctionable violation. Accordingly, no personal
12 sanctions against the Defendant's counsel are ordered.

13
14 Guam Rule of Civil Procedure 37(a)(4)(A), requiring payment of reasonable costs and
15 attorney's fees to a successful movant of a Rule 37(a) motion, contains an exception when
16 "other circumstances make an award of expenses unjust." GRCP 37(a)(4)(A). The Court is
17 disheartened by the incompleteness of the procurement record, and by the fact that no one was
18 ultimately responsible for ensuring that the Government complied with its obligations to
19 generate, retain, and disclose the documents as required by 5 GCA § 5249 and the Guam Rules
20 of Civil Procedure. The Court admonishes the Government to ensure that future procurement
21 records conform to the requirements of the Guam Procurement Law. However, under the
22 circumstances of the case, including the size of the procurement record, though incomplete, the
23 documented extensive efforts of the Defendant's attorney to comply with discovery obligations,
24 the fact that GSA representatives have declared that GSA has no more documentation than what
25 GSA has already produced, the uncertainty that any absent documents, if existing, would affect
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1 the merits of the case, the lack of previous guidance from the judiciary on the meaning of the
2 Government's statutory obligations, and the fact that the taxpayers of Guam would ultimately
3 have to shoulder the burden of any costs or fees award, the Court concludes that on this
4 occasion an award of expenses would be unjust. Accordingly, the Plaintiff's request for costs
5 and attorney's fees is DENIED.

6 **VIII. Defendant's Cross-Motion for Rule 11 Sanctions**

7
8 In its opposition, the Defendant cross-moved for Rule 11 sanctions against the Plaintiff's
9 counsel. Def.'s Opp. 5-6, May 1, 2014. The Defendant argues that Rule 11 sanctions are
10 warranted on the alleged bases that the Plaintiff, by and through counsel, filed a frivolous
11 motion, was dishonest with regard to its knowledge of Dr. Okamura, made an unwarranted
12 accusation as to the defense counsel's reasonable inquiry, had previous knowledge that only one
13 bid would be accepted for Part E, and used improper litigation tactics. Id. at 5-16.

14
15 As stated above, the Court finds that not all documents that were required to be
16 produced by 5 GCA § 5249, and by the Plaintiff's requests for production pursuant to the Guam
17 Rules of Civil Procedure, were indeed produced. Therefore, the Plaintiff's Motion for
18 Sanctions, which is in essence a discovery motion, is not frivolous or improper. For a litigant's
19 counsel who believes opposing counsel has not turned over all the discovery materials required
20 by law, filing a motion seeking an order to produce discovery is a proper action. See GRCP 37.

21
22 Whether or not Plaintiff knew that Dr. Okamura was involved with the procurement
23 project is not precisely the right question for determining the propriety of discovery requests
24 that relate to him. Rather, the Plaintiff argues that it did not know of certain documents relating
25 to Dr. Okamura that should have been included in the procurement record, and that it only
26 learned of their existence, or of the events that should have caused the documents' creation,
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1 upon deposing him. See Pl.'s Mot. 3, Apr. 9, 2014. The Court does not find the Plaintiff's
2 counsel's representations of the Plaintiff's level of familiarity with the role of Dr. Okamura to
3 be sanctionable.

4 Nor is the fact that the Plaintiff knew ahead of time that only one bidder would win the
5 bid for Part E, both the 10bps service and the 1bps service, relevant to a sanctions motion. The
6 Plaintiff is not challenging the Government's representations about part E, but rather the
7 wisdom of the Government's decision not to split Part E into two sub-bids. Pl.'s Compl. 7, Mar.
8 20, 2013. Its right to do so before this Court is statutorily provided by the Guam Procurement
9 Law. 5 GCA § 5480 (2005).
10

11 As stated above, the Court finds that the Defendant's counsel did not engage in a lack of
12 due diligence in providing discovery materials to the Plaintiff that is worthy of sanction. The
13 Court admonishes the Plaintiff's counsel over the potency of the rhetoric in the Plaintiff's April
14 9, 2014 motion. However, given the merits of the Plaintiff's position in this discovery dispute,
15 the Court does not find that rhetoric to be sanctionable. The Defendant's Cross-Motion for Rule
16 11 Sanctions is DENIED.
17

18 CONCLUSION

19 For the reasons set forth above, the Court GRANTS the Plaintiff's Motion for Sanctions.
20 By way of remedy, Court VACATES the Public Auditor's Decision of March 6, 2013 in the
21 case of OPA-PA-12-018. The Public Auditor is hereby ORDERED to issue a new Decision, not
22 inconsistent with this Decision and Order, in light of the new evidence. The trial date set for
23 August 18, 2014 is hereby VACATED. This Court's jurisdiction is hereby STAYED during the
24 pendency of the renewed proceeding before the Public Auditor. The Plaintiff's request for costs
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1 and attorney's fees is DENIED. The Defendant's Cross-Motion for Rule 11 Sanctions is
2 DENIED.

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5 IT IS SO ORDERED this day of AUG 08 2014.

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8 HONORABLE ARTHUR R. BARCINAS
9 Judge, Superior Court of Guam

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26 I do hereby certify that the foregoing
is a full true and correct copy of the
original on file in the office of the
clerk of the Superior Court of Guam.
27 Dated at Hagåtña, Guam

28 
AUG 08 2014

Cynthia T. Tiong

Deputy Clerk, Superior Court of Guam