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 238 Archbishop Flores St.
 Hagåtña, Guam 96910



TRANSMITTAL

To:	Ms. Regine Biscoe Lee President & Chief Executive Officer Guam Visitors Bureau 401 Pale San Vitores Road Tumon, Guam 96913 Email: Regine.lee@visitguam.org	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	13 (including cover page)
CC:	Mr. Daniel J. Berman, Esq Attorney for Appellants Glimpses of Guam, Inc. Berman Law Firm Suite 503, Bank of Guam Bldg. 111 Chalan Santo Papa Hagåtña, Guam 96910 Phone: (671) 477-2778 Fax: (671) 477-4366 Email: djberman@pacificlawyers.law	Date:	March 12, 2025
		Phone : Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-25-002 Notice of Receipt of Appeal

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



OFFICE OF PUBLIC ACCOUNTABILITY

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

Phone: (671) 475-0390 / FAX: (671) 472-7951

March 12, 2025

Ms. Regine Biscoe Lee
President & Chief Executive Officer
Guam Visitors Bureau
401 Pale San Vitores Road
Tumon, Guam 96913

VIA EMAIL: Regine.lee@visitguam.org

Re: Notice of Receipt of Appeal – OPA-PA-25-002

Dear Ms. Biscoe Lee,

Please be advised that Glimpses of Guam, Inc. (hereinafter referred to as “Glimpses”) filed an appeal with the Office of Public Accountability (OPA) on March 11, 2025, regarding the Guam Visitors Bureau’s (GVB) denial of its protest decision related to the procurement for Integrated Communications, Advertising and Event Support Service (GVB RFP 2025-002). OPA has assigned this appeal case number OPA-PA-25-002.

Immediate action is required of GVB 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 eleven 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 appeal. 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 **Wednesday, March 19, 2025**, 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 **Wednesday, March 26, 2025**, ten work days following receipt of this notice.

When filing all required documents with our office, please provide one original and one copy to OPA (**electronic filings will be acceptable and highly encouraged, and can be emailed to jhernandez@guamopa.com**), and serve a copy to Glimpses.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at jhernandez@guamopa.com or 475-0390 ext. 204 should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First 10 pages of the Notice of Appeal – OPA-PA-25-002

Cc: Daniel J. Berman, Esq., Attorney for Glimpses

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PROCUREMENT APPEAL

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 3/11/25
TIME: 2:43 PM BY: Thomas Quichocho
FILE NO. OPA-PA-002

Attorneys for Appellant:
GLIMPSES OF GUAM, INC.

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

IN THE APPEAL OF
GLIMPSES OF GUAM, INC.,
Appellant.

NOTICE OF PROCUREMENT APPEAL
Docket No. OPA-PA-002

To: Office of Public Accountability ("OPA")

Appellant Information

Name: Glimpses of Guam, Inc. ("Glimpses")

Mailing Address: 161 US Army Juan C. Fejeran Street
Barrigada Heights, Guam 96913

For purposes of this Appeal, please direct filings and
correspondence to Glimpses' legal counsel:

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Berman Law Firm
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Business Address: 161 US Army Juan C. Fejeran Street
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Email Address: djberman@pacificlawyers.law

Daytime Contact No.: 671-477-2778

Fax No.: 671-477-4366

Appeal Information

1
2 A. Purchasing Agency: Guam Visitors Bureau

3 B. Procurement No.: GVB RFP 2025-002 Integrated Communications,
4 Advertising and Even Support Service

5 C. Decision being appealed was made on February 24, 2025, by Gerald S.A.
6 Perez, Acting President and CEO, which was received by undersigned counsel on
7 February 24, 2025. A copy of said Decision (without 254 pages of exhibits) is attached
8 hereto as Exhibit "1".

9 D. Appeal is made from a Decision on Protest of Method, Solicitation and
10 Award.

11 E. Names of competing Bidders, Offerors, or Contractors known to
12 Appellant: Ruders Integrated Marketing Strategies ("RIMS"); Manhita; Galaide; and,
13 Greenlight.

14 **Statement Supporting the Appeal**

15 **1. Background**

16 Between January 1, 2024 and approximately December 15, 2024, Glimpses was
17 issued and held a Contract for the GVB marketing services that was renewed for a year
18 of services to end on September 30, 2025. See Exhibits "2" (GVB/Glimpses Contract
19 dated November 29, 2023) and "3" (GVB Letter dated September 27, 2024 to Glimpses).
20 On December 26, 2024, when Glimpses received notice of termination for convenience
21 from GVB, a closing conference was held to confirm there was "no cause" for the
22 December 2024 termination except for the convenience of GVB.

23 On December 27, 2024, GVB RFP 2025-002 was issued.

24 On January 17, 2025, Glimpses timely submitted its bid.

25 On January 21, 2025, GVB recommended award to RIMS. See Exhibit "4".
26 Glimpses was notified that its bid was rejected. At the time, Glimpses was not notified
27 why its bid was rejected. See Exhibit "4".
28

1 On January 27, 2025, Glimpses served its Sunshine Law and FOIA requests on
2 GVB. *See* Exhibit “7”, Glimpses Sunshine Law Request No. 1 (request for bid of
3 “RIMS”) dated January 27, 2025, attached. And on February 1, 2025, GVB served its
4 Responses, but withheld and concealed any bid submission from “RIMS”.

5 On February 4, 2025, Glimpses timely filed its protest with GVB. *See* Exhibit “5”.

6 On February 24, 2025, GVB issued its decision and rejection of Glimpses’ protest
7 and “Notice of Determination of Award Without Delay”. *See* Exhibit “1”, GVB Letter
8 dated February 24, 2025 to Glimpses (without 254 pages of exhibits), attached hereto.
9 Therein, GVB provided explanation behind their award.

10 This procurement is for integrated advertising and marketing services. The RFP
11 provides that “... GVB is seeking visionary businesses to play a pivotal role in
12 establishing the island as a premier destination in the Asia Pacific region ...” *See* RFP,
13 p. 9 of 40. Despite its stated intention to seek out a visionary business, GVB awarded
14 the right to contract to a lesser qualified bidder.

15 In the evaluation, Glimpses was ranked third with 220 points and “Manhita” was
16 ranked first¹ with 271 points. However, only Glimpses held a previously unblemished
17 and solid performance on their contract previously awarded by GVB for marketing
18 services over a term between January 1, 2024 to September 30, 2025. *See* Exhibit “3”,
19 Letter from GVB to Glimpses dated September 27, 2024, extending the contract.

20 But, no RFP or prior Notice to the Governor, Legislature or the public of Guam
21 exists that converted this procurement into a state of declared public emergency so as to
22 apparently circumvent the automatic stay on the issue of a new contract to its preferred
23 bidder. *Id.; also*, 5 GCA § 5425(g). Glimpses is unaware of a state of public emergency
24 caused by a suspense of advertising and marketing services for GVB to tourist markets
25 for the purpose of the conduct of OPA review.

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27 ¹ Glimpses cannot be sure if some form of serious typographical error exists, or if a “Manhita” or “The
28 Manhita Group” exists, or has been improvidently or illegally replaced by GVB to now read “RIMS”.

1 **2. GVB’s Acceptance Of The RIMS Bid Violated The RFP**

2 The scope of work in the RFP 2025-002, subsections *Communications & Advertising*
3 *Scope of Work* and *Metrics & Reporting*, were almost identical to the Contract C24025
4 (awarded to Glimpses) that had been renewed in C25010 on September 27, 2024
5 through September 30, 2025, only to be terminated by GVB in December 2024. *See*
6 Exhibits “2”, GVB/Glimpses Contract November 29, 2023; *also*, Exhibit “3”, GVB Letter
7 dated September 27, 2024. There has never been any indication of unsatisfactory work
8 by Glimpses; and in fact, Glimpses had been praised for their quick turnaround of
9 projects and execution of events. This RFP appears unnecessary at best and biased at
10 worst.

11 **A. No State of Public Emergency Exists**

12 The urgency of a public emergency to resume marketing activities, while noted,
13 is as speculative as it is unsupported by the surprise declaration. The alleged urgency
14 does not override the public policy necessity of procurement law for a fair procurement
15 procedure and the valid concerns presented in the Glimpses protest. Stated another
16 way, the last-minute conversion of this procurement into a sole source emergency
17 contract is not warranted, nor does it explain how and why GVB management and
18 employees cannot perform any or some of the marketing and advertising actions
19 without the bidder RIMS. Any bona fide public emergency would have been stated in
20 the RFP and up front.

21 **B. No Objective Evaluation**

22 Inside the GVB evaluation scoresheet, the Glimpses proposal received a
23 noticeably low score from Evaluator B, particularly under *Qualifications and Experience*.
24 But, as an objective measure, having Glimpses’ contract admittedly renewed as recently
25 as September 27, 2024 for a one year period, demonstrates that Glimpses’ work and
26 qualifications more than met the needs of GVB. This scoring can only be explained
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1 through an unfair, biased approach that is contrary to objective criteria, if such were in
2 place.

3 Moreover, the evaluation score sheet of GVB shows that “Manhita” or “The
4 Manhita Group” had the highest score of 271 and was ranked no. 1. See GVB award to
5 RIMS (Evaluation of Proposals), Exhibit “4”. But, RIMS is not even mentioned on the
6 Evaluation of Proposals. “Manhita” is first, and remains an unknown bidder to the
7 present, and apparently was denied an award despite receipt of the highest score.²

8 GVB’s evaluation table provides four (4) factors for review and satisfaction. The
9 first three (3) are “qualifications and experience” for 150 points; “demonstrated
10 capability and capacity to respond” for 15 points; and, “quality and responsiveness” for
11 15 points. Given that it is undisputed that Glimpses performed the same contract in
12 2023-2024 without blemish or any kind of deficiency, Glimpses could not have received
13 less than the maximum points in these three (3) of four (4) categories nor be ranked
14 below that of the top 2 finishers. See Exhibits “2” to “6”, attached. In contrast, RIMS
15 had no prior experience in performing these contract services. More, the demonstration
16 of “capability and capacity” could only be top rank, given the unqualified success of
17 Glimpses on its November 29, 2023 contract. The Glimpses quality and responsiveness
18 had to be given a maximum score of 15 based upon the record. The total for Glimpses
19 should have been 180 just for these three (3) categories.

20 Glimpses could find no material or qualitative differences in the fourth category
21 “D. Plan of Performance - Approach and Strategy” between the bids of Glimpses and
22 Manhita because the Manhita or “RIMS” bid was not produced pursuant to Sunshine
23 Law request No. 1. As a consequence, Glimpses requests a *de novo* review and neutral
24 and objective re-evaluation of the submitted bids.

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² *Supra* at footnote 1.

1 **3. GVB Failure and Refusal to Notify Glimpses of Right to Review and Appeal**

2 GVB's notice of rejection to Glimpses failed or refused to give notice that the
3 aggrieved bidder Glimpses has the legal right to an appeal to the OPA or the Court.
4 5 GCA § 5425(c)(3); *Compare* Exhibit "1", GVB Notice of rejection dated February 24,
5 2025. Failure to give notice of the right to appeal is a violation of procurement law. The
6 Public Auditor's power to review agency protest action is *de novo*. 5 GCA § 5703.

7
8 **4. A Crucial Portion Of The Specifications Are Ambiguous And Unfair And The Procurement Must Be Rebid**

9 The Glimpses proposal was given a low score on the *Plan of Performance –*
10 *Approach and Strategy* which asked to create a hypothetical scenario with very little or no
11 guidance on budget, expected performance outcome(s) or relevant criteria for
12 judgment.³ Glimpses does not believe that this category is a valid basis for evaluation of
13 capabilities.

14 Guam procurement law provides in relevant part at 5 GCA § 5211(e) that:

15 ... Bids shall be evaluated based on requirements set forth in
16 the invitation for Bids, which may include criteria to
17 determine acceptability such as inspection, testing, quality,
18 workmanship, delivery and suitability for a particular
19 purpose. Those criteria that will affect the bid price and be
20 considered in evaluation for award shall be objectively
measurable, such as discounts, transportation costs, and
total or life cycle costs. The Invitation for Bids shall set forth
the evaluation criteria to be used. No criteria may be used in

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³ It is well settled that a municipal service contract is governed by the provisions of article 5-A of the General Municipal Law, which are designed "with the dual purposes of fostering honest competition and also to guard against favoritism, improvidence, extravagance, fraud and corruption" (*Le Cesse Bros. Contr. v. Town Bd.*, 62 AD2d 28, 31, *affd on opn below* 46 NY2d 960). To promote those purposes, a municipality is obligated, "in advance of bidding, to convey in precise terms to prospective bidders the exact basis on which the contract will be awarded, so that each such bidder will be enabled to make an intelligent evaluation and bid" (*Matter of Suffolk Roadways v. Minuse*, 19 AD2d 888, 89; see also, *Matter of Progressive Dietary Consultants of N.Y. v. Wyoming County*, 90 AD2d 214, 217). Furthermore, the municipality is "required to furnish specifications which state the nature of the work as definitely as practicable and which contain all the information necessary to enable bidders to prepare their bids" and "it must award the contract on the basis provided for in the specifications and determine the 'lowest responsible bidder' in accordance with the specifications" (*Matter of Progressive Dietary Consultants of N.Y. v. Wyoming County*, *supra*, at 217). *Browning-Ferris*, 204 A.D. 2d at 1047-1048 (N.Y. App. Div. 1994).

1 bid evaluation that are not set forth in the Invitation for Bids.
(emphasis added)

2 This provision is necessary to ensure that bidders are in fact bidding in all respects on
3 the same procurement.⁴ This theme is repeated in Guam's procurement regulations. 2
4 GAR § 4102(a)(1) provides in relevant part that "... Specifications shall be drafted with
5 the objective of clearly describing the territory's requirements". 2 GAR
6 § 3115(d)(2)(A)(ii) provides that a solicitation may be cancelled after bid opening if
7 "... ambiguous or otherwise inadequate specifications were part of the solicitation ..."
8 The Public Auditor has recognized that ambiguous or conflicting IFB requirements
9 mandate that the solicitation be cancelled. See OPA Decision dated March 20, 2015, in
10 *In the Appeal of Pacific Data Systems, Inc.*, OPA-PA-14-007. That ruling is consistent with
11 case law on this issue.

12 In *Inferno Associates v. Division of Administration*, 692 So.2d 1280 (La. App. 1997),
13 the state issued an IFB for construction and installation of three medical waste
14 incinerators. Two bids were submitted. The lowest bidder failed to provide
15 specifications for the construction. Although the IFB required that detailed construction
16 specifications be furnished with the bid package, it did not define what was meant by
17 "detailed construction specifications". The hearing officer determined that the IFB was
18 ambiguous as to what information was required, and when it was required. The
19 hearing officer ordered that the solicitation be set aside as a result of this ambiguity. On
20 appeal, the court upheld the decision of the hearing officer, concluding that the
21 evidence demonstrated that the specifications as written could not fairly be used to
22 evaluate the bids. *Id.* at p. 1284. See also *Caber Systems, Inc. v. Dept. of General Services*,
23 530 So.2d 325 (Ct. App. Fla. 1988); *Mark Dunning Industries, Inc. v. Perry*, 890 F.Supp.
24 1504 (M.D. Ala. 1995); *Gale v. City of St. Paul*, 98 N.W.2d 377 (1959).

27 ⁴ "No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids". 5 GCA
28 § 5211(e).

1 The point is that the solicitation for bids, and importantly the bids themselves,
2 must be apple to apple. If the specifications are incomplete, as in the *Inferno Associates*
3 case, this is not possible. It is respectfully submitted that the situation here is far more
4 egregious. The problem is not only that GVB failed to specify what it wanted, and that
5 it recommended “key goals”, but instead that the solicitation was highly misleading
6 since the bid made by Glimpses was not prohibited for non-responsiveness. It became
7 inevitable that a bidder who ignores GVB’s recommendation and provides for a
8 different kind of response will be the winner. That is extremely unfair.

9 Specifically, the evaluation fourth “criteria” of GVB, worth 120 points out of 300;
10 that is, “D. Plan of Performance – Approach and Strategy” (Exhibit “4”), was not set
11 forth in the RFP either in those words nor in weighting (40%). See Exhibit “6”, RFP
12 Scope of Work, “Communications & Advertising Scope of Work”, excerpt § 1.1, at pp.
13 10-12, attached. While wordy and verbose, the RFP sub-sections 1 to 7 in § 1.1, p. 10, do
14 not explain to the bidders the exact criteria “D” that was actually used for evaluation.
15 *Compare and contrast*, Exhibit “6” p. 10 to Exhibit “4” Evaluation Table, attached.

16 The only fair result is that GVB be ordered to clearly decide what precisely in the
17 RFP was sought different than the previous contract issued to Glimpses, and issue a
18 new solicitation, so that all bidders will be bidding on the same project.

19 **5. GVB Was Required to Issue Only an Invitation for Bid**

20 The issue of an “RFP” for the operation and management of an advertising and
21 marketing plan is not a “professional service”. Only the service of “accountants,
22 physicians, lawyers, dentists, licensed nurses, other licensed health professionals and
23 other professionals” are procured by a Request for Proposals. 5 GCA § 5216, 5121(a); 2
24 GAR § 3114(a); also, *Fleet Serv. Inc. v. Dept. of Admin.*, 2006 Guam 6, ¶15.

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Ruling Requested

Glimpses requests that the Request for Proposal and intent to award be voided.

Alternatively, Glimpses requests that the OPA order that GVB seek independent re-evaluation of the bids submitted for this procurement. The scope of the procurement was ambiguous, and the failure of GVB to unambiguously state whether it required the same or different performance criteria from the contract issued to Glimpses in the RFP, and the resulting inevitable failure of the bidders to submit parallel bids, has subverted the purpose of this procurement and is cause to re-evaluate the bids.

Separately, the GVB evaluation is unconnected to the undisputed facts of the record; that is, the apparent top ranked bid submission of Glimpses, based on their actual performance in 3 of 4 required categories, that should have lead to an award of the contract to Glimpses.

Declaration Re No Court Action

Pursuant to 5 GCA Chapter 5 § 5425(g), unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

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

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DATED this 11 day of March, 2025.

Respectfully submitted,

BERMAN LAW FIRM
Attorneys for Appellant
GLIMPSES OF GUAM, INC.

By: 

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