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TRANSMITTAL

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	Ms. Jessica Toft, Esq. Port Authority of Guam 1026 Cabras Highway Suite 201 Piti, Guam 96925 Phone: (671) 475-5931/35 Fax: (671) 477-2689/4445 Email: jtoft@portofguam.com	Pages:	5 (including cover page)
CC:	Ms. Jacqueline Taitano Terlaje, Esq. Attorney for Appellant Data Management Resources, LLC Law Office of Jacqueline Taitano Terlaje, P.C. 284 W Chalan Santo Papa Hagåtña, Guam 96910 Phone: (671) 648-9001 Fax: (671) 648-9002 Email: info@terlajelaw.com	Date:	December 6, 2024
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Re: OPA-PA-24-004 Decision and Order RE Purchasing Agency's Motion to Dismiss

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Thank you,
 Jerrick Hernandez, Auditor
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**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE MATTER OF

**Data Management Resources, LLC,
Appellant.**

And

**Port Authority of Guam,
Purchasing Agency.**

Docket OPA PA-24-004

**DECISION AND ORDER RE
PURCHASING AGENCY'S MOTION
TO DISMISS**

This matter came before the Office of Public Accountability (Hereafter Referred to as "OPA") on November 18, 2024, pursuant to the Purchasing Agency Port Authority of Guam's (Hereafter Referred to as "PAG") Motion to Dismiss. The Appellant Data Management Resources, LLC (Hereafter Referred to as "DMR") filed their Opposition to the Motion to Dismiss on November 25, 2024. A Reply to the Opposition was filed by the Purchasing Agency on December 1, 2024. A Hearing on the Motion to Dismiss was held on December 3, 2024 via Zoom Meeting, where their respective attorneys represented the Parties.

ANALYSIS

In its Motion to Dismiss, PAG argues that OPA lacks jurisdiction to hear this appeal because DMR did not submit its protest within the fourteen (14) day limit of when they knew or should have known the issues. PAG cites June 12, 2024, when bids were opened, as the date DMR was made aware of the issues that are the basis of their protest. DMR's protest was that the

1 awarded vendor, Pacific Data Systems (“PDS”), was a non-responsive bidder for not providing
2 required literature with its proposal. PAG states that all bids were opened on June 12, 2024,
3 including PDS’s bid (price submission, containing its pricing, forms, and all alleged defects to
4 which DMR argues). All of the portions of PDS’s bid submission have been available to DMR
5 and the public since June 12, 2024 (in accordance with Title 2 of Guam Administrative Rules
6 and Regulations, Division 4 § 3109(1)(2)).
7

8 Cade and Richard Taitano, representing DMR, were present at the bid opening and
9 announcement, including announcement of all other included documents and items. A Bid
10 Abstract showing PAG’s acceptance of PDS’s bid price for evaluation was prepared during the
11 same bid opening, with Cade and Richard Taitano present. The bids were evaluated, and on June
12 28, 2024, Notice of Award announcing PDS as the awarded contractor was issued to DMR, PDS,
13 and the two other vendors who submitted bids (Computer Smart/Megabyte and ComPacific).
14

15 On July 12, 2024, the Appellant DMR filed their first protest, which was filed 30 days
16 after bids were opened to the public, and 14 days after DMR received the Notice of Award. On
17 September 10, 2024, PAG issued a decision addressing DMR’s protest.
18

19 In its Opposition to the Motion to Dismiss, DMR argues that while PAG held the bid
20 opening on June 12, 2024, they did not evaluate the bids at that time. They cite June 19, 2024 as
21 when PAG determined PDS’s bid complied with the requirements of the Invitation for bid and
22 was responsive. They also cited June 25, 2024 as the date PAG determined PDS was the lowest
23 responsive bidder. A bid status dated June 25, 2024 was sent to DMR, which acknowledged
24 receipt on July 1, 2024. DMR cites June 28, 2024, when the Notice of Award was issued
25 announcing PDS as the award contractor, as the date they knew or should have known of the
26
27
28

1 issues for their grounds to protest. Thus, they argue the fourteenth day to file a protest was July
2 12, 2024.

3 Under *DFS Guam L.P. v. The A.B. Won Pat International Airport Authority*, DMR should
4 have been able to file a protest “when alleged misconduct forms the basis of a procurement
5 protest, the time runs from the date on which the protesting party first learned of the purported
6 misconduct.” Id. ¶ 89. A protest filed more than 14 days after the disappointed offeror or bidder
7 had notice of the grounds for the protest is barred as untimely. This is true “even if no contract
8 has yet been awarded, even if the protest was filed within 14 days of the agency’s selection of
9 bidders or offerors, and even if the protestant did not subjectively understand or appreciate the
10 ground of protest.” Id. ¶ 87

13 A bidder cannot wait until award is made to protest and complain that another bidder’s
14 bid should have been rejected. Id. ¶ 99. It is “not the award that was the relevant point of injury;
15 rather, the injury occur[s] when [the agency] consider [s] a non-qualifying bid alongside the
16 qualifying bids.” Id. ¶ 96.

18 In line with the Guam Supreme Court’s opinion and the decisions for OPA-PA-21-001
19 and OPA-PA-24-002, for this appeal to be properly before the Public Auditor, the Appellant
20 DMR must have filed its protest no later than fourteen days after it became aware of the alleged
21 issues with PDS’s bid and PAG was still considering it for the award. At the bid opening on June
22 12, 2024, DMR was aware that PDS had the lowest bid amount of the four bids submitted, and
23 therefore was in consideration of being awarded by PAG.

25 When DMR’s representative saw that their bid price was not the lowest, they should have
26 known that the only way they would have been awarded the contract is if the other bids (that had
27 a lower price) were determined to be non-responsive. DMR’s representative should have
28

1 requested to review the other bids, and then they would become aware of the alleged issues with
2 PDS's bid that would be the basis for their protest. Therefore, the Public Auditor finds that the
3 date of when DMR "knew or should have known" the issue to be June 12, 2024. Fourteen days
4 after June 12, 2024, would have been June 26, 2024. However, DMR only filed its letter of protest
5 on July 12, 2024, after it received the Notice of Award (to PDS) on June 28, 2024. The Public
6 Auditor finds that DMR's protest was therefore untimely.
7

8 **CONCLUSION**

9 The Public Auditor of Guam, having reviewed the documents on file in this case and
10 being further familiar with the record and pleadings herein, GRANTS PAG's Motion to Dismiss
11 for lack of subject matter jurisdiction.
12

13 All other issues set forth in the PAG's motion and DMR's motion will not be addressed.
14 All filing deadlines set forth in the Scheduling Order of November 15, 2024 are VACATED.
15

16 This is the final administrative decision. The Parties are hereby informed of their right to
17 appeal this Decision to the Superior Court of Guam, in accordance with Subarticle D of Article
18 9, of Title 5 of the Guam Code Annotated (GCA) § 5481(a) within fourteen (14) days after receipt
19 of a Final Administration Decision.

20 A copy of this Decision shall be provided to the parties and their respective attorneys, in
21 accordance with 5 GCA § 5702, and shall be made available for review on the OPA website at
22 www.opaguam.com.
23

24 **SO ORDERED** this 6th day of December, 2024 by:
25

26 

27 _____
28 **Benjamin J.F. Cruz**
Public Auditor of Guam



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-24-004 Decision and Order RE Purchasing Agency's Motion to Dismiss

Jerrick Hernandez <jhernandez@guamopa.com>

Fri, Dec 6, 2024 at 9:20 AM

To: "Jessica L. Toft" <jtoft@portofguam.com>, ADMIN DESK <info@terlajelaw.com>

Cc: Terlaje Law Legal <legal@terlajelaw.com>, "Rory J. Respicio" <rjrespicio@portofguam.com>, Maryann Manglona <mmanglona@guamopa.com>

Hafa Adai,

Please see attached Decisions and Order RE Purchasing Agency's Motion to Dismiss for OPA-PA-24-004. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Best Regards,



Jerrick J.J.G. Hernandez, MA, CGFM, CFE, CICA, CGAP
Accountability Auditor

Office of Public Accountability

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