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OPA-PA-25-002: In the Appeal of Glimpses of Guam, Inc.

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Mon, May 12, 2025 at 4:31 PM

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Hafa Adai Mr. Hernandez,

Please see the attached ***Purchasing Agency's Response in Opposition to Appellant's Motion for Summary Judgment*** for filing in the above-reference matter.

Kindly confirm receipt of this email and its attachment.

Sincerely,

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**Purchasing Agency's Response in opposition to Appellant's Motion for Summary Judgment.pdf**

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9 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

10 IN THE APPEAL OF

Appeal No. OPA-PA-25-002

11 GLIMPSES OF GUAM, INC.,

**PURCHASING AGENCY’S RESPONSE TO
APPELLANT’S MOTION FOR SUMMARY
JUDGMENT**

12 Appellant.

13 **OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

14 This is the Guam Visitors Bureau’s (“GVB’s”) Response to Appellant Glimpses of
15 Guam, Inc.’s (“Glimpses”) Motion for Summary Judgment (hereinafter “Response to MSJ”).

16 GVB opposes Glimpses’ MSJ for the following reasons:

17 i. RIMS did not obtain an agency decision prior to filing this appeal; RIMS
18 did not exhaust administrative remedies, leaving the OPA without jurisdiction to decide
19 this motion.

20 ii. RIMS did not timely seek the Public Auditor’s confirmation of GVB’s
21 determination of need re the substantial interests of Guam; RIMS did not exhaust
22 administrative remedies, leaving the OPA without jurisdiction to decide this motion.

23 iii. RIMS’ Manhita submission did not violate the procurement law or the terms
24 of the RFP.

25 iv. There is no requirement to inform a party of the time to protest an
26 agency’s determination of need.
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2 I. BACKGROUND

3 On October 24, 2024 the Governor attended GVB's board meeting to urge GVB, its board
4 of directors and members to take immediate action to change the trajectory of Guam's tourism
5 industry, as it had lost market share to rival destinations post-Covid. At that meeting, the
6 Governor presented the results of two studies and that painted a dim picture of Guam's large
7 tourism industry. Refer to [https://www.postguam.com/news/local/guam-tourism-at-critical-](https://www.postguam.com/news/local/guam-tourism-at-critical-juncture/article_b5e20b40-9405-11ef-86f9-7fdbf92a21a3.html)
8 [juncture/article_b5e20b40-9405-11ef-86f9-7fdbf92a21a3.html](https://www.postguam.com/news/local/guam-tourism-at-critical-juncture/article_b5e20b40-9405-11ef-86f9-7fdbf92a21a3.html) (visited on 5/7/25). After the
9 meeting, GVB set about acting on plans to turn tourism around. See, generally,
10 <https://www.guamvisitorsbureau.com/tools-resources/industry-recovery-updates> (last visited
11 5/7/25). On December 20, 2025, GVB made a Determination of Need and Record of Planning re
12 Integrated Marketing, Communications, Advertising and Event Support Services (hereinafter
13 "ICAESS ") and issued GVB Request for Proposal ("RFP") 2025-002. GVB001313-
14 GVB001315. Four bidders responded to the ICAESS RFP including the (i) Manhita Group
15 ("Manhita"), a collaborative submission by Ruder Integrated Marketing Strategies ("RIMS"), (ii)
16 Galaide Group LLC ("Galaide"), (iii) Glimpses of Guam, Inc. ("Glimpses") and (iv) The
17 Greenlight Group ("Greenlight"). At noon on January 17, 2025, bid submissions were closed.
18 See GVB0118. At 2:00 p.m. the bids were evaluated. See GVB0237. GVB ranked Manhita first
19 (271 points), Galaide a close second (261 points), Glimpses a distant third (220 points), and
20 Greenlight fourth (215 points). GVB0239-0282.

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23 On January 21, 2025, GVB notified the bidders of its intent to award the ICAESS RFP to
24 RIMS. On January 27, 2025, Glimpses submitted a FOIA request related to the ICAESS RFP.
25 GB0308-GVB0311. On January 30, 2025, GVB responded to a FOIA request from Glimpses.
26 GVB0312-GVB0322.
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1 On February 4, 2025, Glimpses submitted a protest regarding the ICAESS RFP.
2
3 GVB0342-GVB0355. On February 6, 2025, GVB notified RIMS of a stay in the ICAESS
4 procurement. GVB0356. On February 14, GVB attempted settlement with Glimpses.
5 GVB0357. On February 19, 2025 GVB made a determination of need to award the ICAESS
6 contract to RIMS without delay to protect the substantial interests of Guam, and on February 20,
7 2025, the designated Deputy Attorney General concurred with the determination. GVB0364-
8 GVB0392. On February 24, 2025, Glimpses was informed that GVB made a determination of
9 need to award the ICAESS contract to RIMS without delay to protect the substantial interests of
10 Guam. GVB0393-GVB0655.
11

12 On March 3 and 4, 2025, GVB and RIMS concluded negotiations and the ICAESS
13 contract was executed. GVB0656-GVB0691. On March 11, 2025, Glimpses filed the instant
14 procurement appeal. *See* GVB1191. On March
15

16 II. DISCUSSION

17 A. The OPA lacks jurisdiction over Glimpses appeal.

18 GVB herein incorporates the grounds for dismissal stated in its May 7, 2025 Motion to
19 Dismiss into this Response to MSJ. Because Glimpses did not obtain an agency decision before
20 filing the instant appeal, it did not exhaust administrative remedies, and there is no jurisdiction to
21 decide its MSJ. Because Glimpses did not timely seek confirmation of GVB's determination of
22 need to award the contract without delay, it did not exhaust administrative remedies, and there is
23 no jurisdiction to decide Glimpses' instant appeal of that determination. Because Glimpses
24 included five grounds in the instant appeal that were not stated in its February 4, 2025 protest, it
25 did not exhaust administrative remedies, the OPA lacks jurisdiction over those grounds. *See*
26 Purchasing Agency Report and Statement, 4.
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2 Additionally, Glimpses states in its MSJ that the decision being protested is GVB's
3 March 21 decision. Because it did not in the instant appeal state grounds concerning GVB's
4 March 21, 2025 Decision Denying Protest (because the protest had yet to be decided), Glimpses
5 failed to obtain jurisdiction over GVB's March 21 decision in this appeal. The instant appeal
6 was filed on March 11, 2025. It is factually impossible to appeal on March 11 a decision issued
7 on March 21. Therefore, there is no jurisdiction in the instant appeal over the grounds stated in
8 Glimpses' MSJ.

9
10 GVB's opposition as stated herein is made notwithstanding the failure of Glimpses to
11 exhaust administrative remedies and the resulting lack of the OPA's jurisdiction over Glimpses'
12 instant appeal, its MSJ, and the unprotested grounds brought to this appeal.

13 B. Glimpses was not entitled to know of RIMS' Manhita submission until the
14 ICAESS award had been made.

15 Glimpses argues that GVB's response to its January 27, 2025 FOIA unlawfully concealed
16 RIMS' Manhita bid submission. Glimpses further argues that GVB's disclosure of the
17 Procurement Record on March 21, 2025 shows GVB's allegedly wrongful conduct to hide
18 RIMS' Manhita submission.

19
20 Glimpses is unaware of, fails to acknowledge, or ignores, the procurement regulations.
21 Since the ICAESS award was made, and the contract was executed, on March 4, 2025, as of
22 January 30, 2025, there was no ICAESS award. Pursuant to 2 GARR Div. 4 § 3114 (h) (1), as an
23 award has not been made on January 30, proposals submitted in response to the ICAESS RFP
24 remained confidential and are not open to public inspection. *Id.* Therefore, there was no legal
25 basis for GVB to disclose RIMS' Manhita submission. Glimpses' MSJ or portions of it that rely
26 on such grounds is without merit and must be denied.
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2 C. GVB'S OPPOSITION NOTWITHSTANDING THAT THERE IS NO
3 JURISDICTION OVER GLIMPSES' APPEAL

4 1. *RIMS's Manhita submission was lawful.*

5 Glimpses argues that RIMS' Manhita submission was not lawful because it was not made
6 by a responsible bidder as required by 5 GCA § 5211 (g) and 2 GARR Div. 4 § 3109 (n).

7 Glimpses points out that there is no registered business organization with Manhita in its name
8 that is connected to RIMS or Big Fish. Similarly, Glimpses argues that there is no assignment or
9 delegation in RIMS'-Big Fish's partnership agreement that shows RIMS' submission was lawful.
10 Thus, Glimpses argues that GVB is not allowed to accept RIMS' Manhita submission as it was
11 not a responsive bid made by a responsible bidder.
12

13 First, RIMS Manhita submission contained RIMS' name on it and identified the
14 submission as a Proposal for ICAESS. The title of the Proposal is Navigating Forward Together,
15 and it was submitted by the Manhita Team/Manhita Group, consisting of RIMS and Big Fish.
16 GVB0697. Attached to the submission were RIMS' certifications and other required responsive
17 documents. GVB0772-GVB0786. The Record contains a "Partnership Agreement" between
18 RIMS and Big Fish where the two agreed to jointly provide marketing, advertising and
19 communication services in response to the ICAESS RFP in a collaborative effort as independent
20 contractors. GVB0662-GVB0663. There can be no doubt that RIMS' submission was its
21 proposal to offer ICAESS services through a collaborative team effort that involved it, Big Fish
22 and a company called SKIFT to provide marketing, communications, advertising and event
23 support services to GVB. In other words, RIMS offered ICAESS services through a
24 collaboration between RIMS and Big Fish. As such, as an offeror, it needed to comply with the
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1 RFP Submission Criteria, which called for an official authorized to bind the Offeror, which for
2 RIMS is Steven Ruder. *See* GVB0778.

3
4 Second, there is nothing in the procurement law or the ICAESS RFP that prohibits
5 collaborative submissions under an agreement between two parties. GVB was looking for full
6 agency services to develop an overall marketing and communications strategy, GVB0126, from
7 an offeror who possesses capabilities, resources and personnel necessary to provide ICAESS
8 services. GVB0131. Before submitting a proposal, the offeror was to make all investigations
9 and examinations necessary to ensure it can comply with the ICAESS requirements to fully
10 perform the contract. *Id.* It is evident that, upon review of the ICAESS RFP, RIMS determined
11 a collaboration could provide the full agency services described in the solicitation. Parties to an
12 agreement have freedom of contract, which is the right and power to construct their own
13 bargains. *Fuller v. Pittard*, 374 So.3d 345, 350 (La. Ct. App. 2023) (citations omitted). The
14 principle of freedom of contract allows parties to draft contracts to avoid certain duties and
15 liabilities that would normally be part of the contractual relationship. *Boise Mode, LLC v.*
16 *Donahoe Pace & Partners Ltd.*, 154 Idaho 99, 107 (Idaho 2013) (citations omitted). The
17 principle endows parties with the right to agree to terms governing their private affairs, provided
18 those terms do not violate law or public policy. *Barak v. ACS International Projects, Ltd.*, 347
19 So.3d 81, 85 (Fla. Ct. App. 2021) (citations omitted). Thus, parties acting in good faith are
20 allowed to associate and agree to terms, conditions and limitations of their respective
21 performances so long as their terms do not violate law or public policy. They may memorialize
22 their agreement by establishing known and to the extent surmised, knowable, parameters of their
23 agreement. RIMS offer which resulted in the collaborated Manhita submission was lawful.
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2 Third, Glimpses was not aggrieved by RIMS' offer. There was nothing in the ICAESS
3 RFP or the procurement law that prohibited RIMS from offering a proposal that was tailored for
4 GVB's specifications. Moreover, Glimpses could have offered a collaborative proposal if it
5 wanted to. RIMS did, and its submission resulted in a highly responsive, competitive offer. It
6 should not be lost on the OPA that Glimpses does not allege an anti-competitive practice, fraud,
7 collusion or prejudice to it because of RIMS' offer—because there was none. Clearly, Glimpses
8 was not aggrieved by RIMS' Manhita submission. *DFS Guam LP v. A.B. Won Pat Guam Int'l*
9 *Airport Auth.*, 2020 Guam 20 ¶ 84 (an aggrieved party is one that is entitled to a remedy because
10 it was harmed in a method of source selection, solicitation or award).
11

12 From the foregoing, it is clear that Glimpses states no facts, nor argues relevant,
13 applicable law, that would make RIMS' offer unlawful. Glimpses' MSJ must be denied on
14 grounds stated in pages 4 – 8 of the motion.

15 2. *GVB's determination of need to award the ICAESS contract without delay*
16 *was lawful.*¹
17

18 Glimpses makes three arguments that GVB's determination to award the ICAESS
19 contract without delay to protect the substantial interests of Guam is void. First, Glimpses
20 argues that GVB was required to notify it of the "decision" [to deny the protest] so that it could
21 timely appeal. Second, GVB failed to notify Glimpses that it had two days to seek appeal of the
22 determination. Third, because it was not told that it had two days to seek review of the
23 determination, Glimpses did not know of the two-day deadline under § 5425 (g) and could not
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28 ¹ GVB has moved to confirm the determination of the ICAESS award without delay.

1 appeal the determination. *See* Motion for Summary Judgment, 9-10. Each of these arguments
2 fail for the reasons that follow.
3

4 As an initial matter, like with the jurisdictional defects discussed *supra*, this ground was
5 not raised in a protest before the instant appeal, and the issues Glimpses raises that are related to
6 the determination were not timely brought to the OPA for confirmation. Glimpses failed to
7 exhaust administrative remedies for its claim that the determination is void, leaving the OPA
8 without jurisdiction over the claim. *DFS*, 2020 Guam 20 ¶¶ 61-74 (explaining that exhaustion –
9 through a protest and agency decision – is required as to each and every claim arising under the
10 Procurement Code).
11

12 Second, Glimpses is charged with knowledge of the fact of the substantial interest
13 determination from the first instance GVB gave notification of it and had a duty to inquire as to
14 its meaning. 1 GCA § 719. Glimpses is accountable for its own neglect because it did not
15 prudently prosecute any inquiry into the meaning of the determination.
16

17 Third, Section 5425 of the Procurement Code provides the administrative procedure for
18 resolving protested solicitations and awards, but the reading urged by Glimpses is wrong for the
19 simple reason that the Procurement Code does not require notice of the right to protest a
20 determination. To begin with here, Section 5425 states in relevant part:

21 **Authority to Resolve Protested Solicitations and Awards. (a) Right to**
22 **Protest.** Any actual or prospective bidder, offeror, or contractor who may be
23 aggrieved in connection with the method of source selection, solicitation or award
24 of a contract, may protest to the Chief Procurement Officer, the Director of Public
25 Works or the head of a purchasing agency. The protest shall be submitted in
writing within fourteen (14) days after such aggrieved person knows or should
know of the facts giving rise thereto.

26 **(b) Authority to Resolve Protests.** The Chief Procurement Officer, the Director
27 of Public Works, the head of a purchasing agency, or a designee of one of these
officers shall have the authority, prior to the commencement of an action in court
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2 concerning the controversy, to settle and resolve a protest of an aggrieved bidder,
3 offeror, or contractor, actual or prospective, concerning the solicitation or award
4 of a contract. This authority shall be exercised in accordance with regulations
5 promulgated by the Policy Office.

6 **(c) Decision.** If the protest is not resolved by mutual agreement, the Chief
7 Procurement Officer, the Director of Public Works, the head of a purchasing
8 agency, or a designee of one of these officers shall promptly issue a decision in
9 writing. The decision shall: (1) state the reasons for the action taken; and (2)
10 inform the protestant of its right to administrative and judicial review.

11 **(d) Notice of Decision.** A copy of the decision under Subsection (c) of this
12 Section shall be mailed or otherwise furnished immediately to the protestant and
13 any other party intervening.

14 **(e) Appeal.** A decision under Subsection (c) of this Section including a decision
15 there under regarding entitlement to costs as provided by Subsection (h) of this
16 Section, may be appealed by the protestant, to the Public Auditor within fifteen
17 (15) days after receipt by the protestant of the notice of decision.

18 **(f) Finality.** A decision of the Public Auditor is final unless a person adversely
19 affected by the decision commences an action in the Superior Court in accordance
20 with Subsection (a) of § 5480 of this Chapter.

21 **(g)** In the event of a timely protest under Subsection (a) of this Section or under
22 Subsection (a) of § 5480 of this Chapter, Guam shall not proceed further with the
23 solicitation or with the award of the contract prior to final resolution of such
24 protest, and any such further action is void, unless:

25 (1) The Chief Procurement Officer or the Director of Public Works after
26 consultation with and written concurrence of the head of the using or
27 purchasing agency and the Attorney General or designated Deputy
28 Attorney General, makes a written determination that the award of the
contract without delay is necessary to protect substantial interests of
Guam; and

(2) Absent a declaration of emergency by I Maga'håga/ Maga'låhi, the
protestant has been given at least two (2) days notice (exclusive of Guam
holidays); and

(3) If the protest is pending before the Public Auditor or the Court, the
Public Auditor or Court has confirmed such determination, or if no such
protest is pending, no protest to the Public Auditor of such determination
is filed prior to expiration of the two (2) day period specified in Item (2) of
Subsection (g) of this Section.

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2 Glimpses submitted its protest over a method, selection, solicitation or award on
3 February 4. GVB stayed the procurement on February 6. GVB0356. GVB's acting general
4 manager tried to resolve the protest by asking RIMS to withdraw its protest on February 14.
5 GVB0357. As provided in subsection (g) (1), on February 19 and 20, GVB made a
6 determination to award the contract to RIMS without delay to protect the substantial interests of
7 Guam. GVB0358-GVB0363. This determination is not a decision over protested grounds. *C.f.*
8 §§ 5425 (a), (c) (d) and (e) (providing the steps to resolve a protest through resolution or decision
9 prior to appeal) *with* § 5425 (g) (providing for the agency's determination of need to award
10 without delay). While §§ 5425 (a) – (e) concern a protest over a source selection, solicitation or
11 award, § 5425 (g) concerns a determination and not a decision. Furthermore, Section 5425 (c)
12 expressly requires that notice of a protest decision inform a protesting party of its right to
13 administrative and judicial review, but there is no such express language in § 5425 (g). Failure
14 to include a term in a statute is a significant indication that its exclusion was intended. E.g.
15 *Commonwealth of N Marianas Is. V Canadian Imperial Bank of Commerce*, 21 N.Y.3d 55 (N.Y.
16 Ct. App. 2013); *Bd. of Trade, Inc. v. State Dept. of Labor, Wage and Hour Admin.*, 968 P.2d 86
17 (Alk. 1998). When the legislature intends not to include a term, courts should not supply one.
18 *Mazzotti v. Swezey*, 103 N.Y.S.2d 956 (Sup. Ct. N.Y. 1951); *People v. Superior Ct.*, 319
19 Cal.Rptr. 3d 100 (Cal. Ct. App. 2024).

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21
22 It makes sense that no notice of the time to seek confirmation of a § 5425 (g)
23 determination was required under § 5425 (c) because the determination is not a decision over a
24 protested ground but a finding of a substantial interests and why it is necessary to protect it.
25 Indeed, the Procurement Code provides for several types of determinations of need. *See* § 5008
26 (need for off island experience); § 5249 (need for a procurement); § 5127 (exceptional term
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1 contract); § 5150 (attorney general review); § 5214 (sole source procurement); § 5215
2 (emergency procurement); § 5230 (nonresponsibility); *see also Guam Imaging Consult., Inc. v.*
3 *Guam Mem. Hosp. Auth.*, 2004 Guam 15 (no requirement to disclose time to seek confirmation
4 of determination of need to award without delay); *CARL Corp v. State Dept. of Educ.*, 946 P.2d 1
5 (Haw. 1997). Although determinations outside of the need to award without delay are
6 protestable within 14 days of receiving knowledge of the determination, the Procurement Code
7 does not require the agency to tell the notified party that it has a deadline to submit a protest and
8 a later deadline to file a procurement appeal should it lose the protest over the determination.
9 Indeed, once receiving knowledge of any determination, a party must *sua sponte* take action to
10 preserve its rights to protest and appeal, whether it has actual knowledge of the 14-day
11 jurisdictional deadline in § 5425 (a) or not. If it were otherwise, the aggrieved party may simply
12 avoid gaining knowledge of the 14-day deadline and defeat the jurisdictional prerequisite to an
13 appeal. If there was any prejudice, Glimpses prejudiced itself by ignoring the deadline to seek
14 confirmation of the determination.
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18 III. CONCLUSION

19 For the reasons stated above, the OPA should deny Glimpses' MSJ.

20 **RESPECTFULLY SUBMITTED THIS 12TH day of May, 2025.**

21
22 **McDONALD LAW OFFICE, LLC**
23 Attorneys for Purchasing Agency
24 *Guam Visitors Bureau*

25 By:

26 
27 _____
28 **JOSEPH B. MCDONALD**