

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



FAX

To:	Mr. Matthew Santos The Office of the Governor 513 West Marine Corps Drive Ricardo J. Bordallo Governor's Complex Hagatna, Guam 96910 Email: procurement@guam.gov	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	10 (including cover page)
CC:	Ms. Jacqueline Taitano Terlaje, Esq. Law Office of Jacqueline Taitano Terlaje, P.C. Attorney for Appellant Data Management Resources, LLC. 248 West Chalan Santo Papa Hagatna, Guam 96910 Phone: (671) 648-9001 Fac: (671) 648-9002 Email: info@terlajelaw.com	Date:	June 9, 2022
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-22-004 Notice of Receipt of Appeal

For Review
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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

June 9, 2022

Mr. Matthew Santos
Office of the Governor
513 West Marine Corps Drive, Ricardo J. Bordallo Governor's Complex
Hagatna, Guam 96910

VIA EMAIL: procurement@guam.gov

Re: Notice of Receipt of Appeal – OPA-PA-22-004

Dear Mr. Santos,

Please be advised that Data Management Resources, LLC. (hereinafter referred to as “DMR” filed an appeal with the Office of Public Accountability (OPA) on June 8, 2022, regarding the Office of the Governor's (OOG) denial of protest related to the procurement for Information Technology Services for a government licensing and permitting system (Request for Proposal: RFP-OOG-2022-001). OPA has assigned this appeal case number OPA-PA-22-004.

Immediate action is required of OOG 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 seven 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 appeals. 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 **Thursday, June 16, 2022**, 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 **Thursday, June 23, 2022**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and one copy to OPA (electronic filings will be acceptable), and serve a copy to DMR. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that OOG provide one original and one electronic file of the said record, which

will be distributed as follows: Copy-1: Master File; and Copy-2: Public Auditor and/or Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 204 or jhernandez@guamopa.com 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 Seven Pages of the Notice of Appeal – OPA-PA-22-004

Cc: Jacqueline Taitano Terlaje, Esq., Attorney for DMR

Jacqueline Taitano Terlaje, Esq.
LAW OFFICE OF JACQUELINE TAITANO TERLAJE, P.C.
284 West Chalan Santo Papa
Hagåtña, Guam 96910
Telephone 671.648.9001
Facsimile 671.648.9002
Email: info@terlajelaw.com

OFFICE OF PUBLIC ACCOUNTABILITY

IN RE APPEAL OF

DATA MANAGEMENT RESOURCES, LLC,

Appellant.

) Docket No. OPA-PA

NOTICE OF APPEAL

RECEIVED

OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 6/8/2022

TIME: 3:46 PM

FILE NO. OPA-PA-22-004

PART II. APPELLANT INFORMATION

Data Management Resources, LLC.
891 Route Barrigada, Guam 96921
Telephone No.: (671) 647-3674
Email: bids@dmrpacific.com

Appellant is represented by Legal Counsel in this appeal. For purposes of this appeal, please direct correspondence intended for Data Management Resources, LLC. to Jacqueline Taitano Terlaje:

LAW OFFICE OF JACQUELINE TAITANO TERLAJE, P.C.
284 West Chalan Santo Papa
Hagåtña, Guam 96910
Telephone 671.648.9001
Facsimile 671.648.9002
Email: info@terlajelaw.com

PART III. APPEAL INFORMATION

- A) Purchasing Agency: Office of the Governor ("OOG")
- B) Request for Proposal No.: RFP-OOG-2022-001

ORIGINAL

- C) Appellant appeals two denials of protest made by Venido Torres issued on May 24, 2022. Neither Decision was made by the head of the purchasing agency. The Decision on Protest # 1 is attached as Exhibit 11. The Decision on Protest # 2 is attached as Exhibit 12.
- D) Appeal is made from a denial of protest pursuant to § 5425(e) of Title 5, Guam Code Annotated (G.C.A).
- E) Name of competing bidders and/or prospective offerors known to Appellant:
Unavailable, as the RFP is pre-proposal submission.

PART IV. FORM AND FILING

(a) Grounds for Appeal

1. DMR appeals the denial of protests related to RFP-OOG-2022-001, Information Technology Services for a government licensing and permitting system.
2. RFP-OOG-2022-001 specifically directs all pre-proposal submission communications to be submitted in writing to the Single Point of Contact, Matthew Santos. *See* RFP-OOG-2022-001, Section 1 Instructions to Offerors, H. Questions/Communications of Offerors Prior to Proposal Submission and Single Point of Contact. It specifically required, "All communications and any questions concerning possible discrepancies, omissions or doubts as to the meaning of any provision of this RFP," to be submitted by February 25, 2022.
3. DMR submitted its questions to OOG. A true and correct copy is attached hereto as Exhibit 3.
4. On March 5, 2022, OOG by Matthew Santos issued its responses to prospective offeror questions submitted before the submission deadline of February 25, 2022. A true and correct copy is attached hereto as Exhibit 4.
5. On March 19, 2022, DMR submitted its first protest to the Office of the Governor related to RFP-OOG-2022-001 on the following basis:

- (i) the failure to clearly describe minimum specifications by the incomplete response to the questions submitted, the failure to

- adequately describe the licensing and permitting system required, and inaccurate information provided adversely affects and compromises the competition required under Guam law, and places prospective offerors at a significant disadvantage;
- (ii) bad faith conduct and unreasonable conditions imposed upon prospective offeror of five year initial contract term with no certification of fund availability for the term of the contract; and
 - (iii) based upon the Responses provided to questions submitted in relation to the request for proposal, no standard is clearly described, which arbitrarily subjects to prospective offerors to unreasonable conditions to qualify to do business with the Government; unreasonable conditions are arbitrary.

A true and correct copy of the protest is attached hereto as Exhibit 6.

6. On March 21, 2022, an acknowledgement of receipt of the protest was received by DMR. A true and correct copy is attached hereto as Exhibit 7.

7. No stay of procurement was issued by OOG, pursuant to Guam law; rather a “suspension” was issued via email to DMR on March 21, 2022. A true and correct copy is attached hereto as Exhibit 8.

8. 5 G.C.A. § 5425(a) requires protests to be made within fourteen (14) days of the issues leading to the protest being known. On March 5, 2022, DMR received responses to its questions submitted on February 25, 2022. DMR lodged its protest on March 19, 2022 within the fourteen days of the grounds for the protest. Therefore, DMR’s protest to the OOG is within the time required by 5 G.C.A. §5425(a).

9. On March 28, 2022, DMR became aware of the failure of OOG to comply with 5 G.C.A. § 5141(b). Specifically, Government of Guam employee Matthew Santos is the identified as the Single Point of Contact for the RFP. *See* RFP-2022-001, p. 5 Section E; p 7, Section H. Matthew Santos is also identified as the Author for RFP-2022-001. *See* RFP-2022-001, p. 5 Section O.

10. Upon information and belief, Matthew Santos is also the author of the Responses provided by OOG on the questions submitted by vendors dated March 5, 2022, and the subject of the Protest dated March 9, 2022.

11. On March 28, 2022, the Guam Community College Procurement Program, dated March 28, 2022, confirmed that there exists no record of the completion of procurement training of

Government of Guam employee, Matthew C. Santos. A true and correct copy is attached hereto as Exhibit 9.

12. On April 8, 2022, DMR submitted its second protest to the Office of the Governor related to RFP-OOG-2022-001 on the following basis:

The Government has engaged in arbitrary conduct in failing to ensure the compliance of its procurement personnel with certification requirements imposed by 5 G.C.A. § 5141(b).

A true and correct copy of the protest is attached hereto as Exhibit 10.

13. On May 24, 2022, DMR received a document entitled "Decision on Letter of Protest # 1" from Venido Torres. A true and correct copy of the Decision is attached hereto as Exhibit 11.

14. On May 24, 2022, DMR received a document entitled "Decision on Letter of Protest # 2" from Venido Torres. A true and correct copy of the Decision is attached hereto as Exhibit 12.

15. On May 24, 2022, DMR received a document entitled "Notice of Determination on Procurement." A true and correct copy is attached as Exhibit 13.

16. Upon information and belief, Venido Torres is not the Chief Procurement Officer, Director of Public Works, nor the head of the Office of the Governor.

17. The document entitled "Notice of Determination on Procurement" fails to comply with 5 G.C.A. §5425(g)(1), and any action taken in contravention of the automatic stay required by Guam law is void.

(b) Potential Disqualification

18. 2 GAR, Div. 4, Chapter 12 § 12216 provides for the recusal and/or disqualification of the Public Auditor.

19. Upon information and belief, Matthew C. Santos is a family member of current Public Auditor, Benjamin J. Santos.

20. DMR submits these facts for consideration of the recusal and/or disqualification of the Public Auditor.

(c) Supporting Exhibits, Evidence or Documents

Appellant submits the following Exhibits:

Exhibit No.	Description
1.	Request for Proposal-OOG-2022-001
2.	February 14, 2022 Amendment No. 1
3.	February 25, 2022 DMR Request for Responses
4.	March 5, 2022 OOG Responses to Offeror Questions
5.	March 5, 2022 Amendment No. 2
6.	March 19, 2022 DMR Protest
7.	March 21, 2022 OOG Acknowledgment of Receipt
8.	March 21, 2022 OOG Suspension
9.	March 28, 2022 Guam Community College Response Re: Matthew Santos
10.	April 8, 2022 DMR Second Protest
11.	May 24, 2022 OOG Decision on Letter of Protest # 1
12.	May 24, 2022 OOG Decision on Letter of Protest # 2
13.	May 24, 2022 OOG Notice of Determination to Proceed with Procurement
14.	May 27, 2022 Amendment No. 3

Appellant submits additional evidence of the non-compliance of OOG with Guam

Procurement Law:

1. 5 G.C.A. § 5249 requires the OOG to maintain a complete procurement record.
2. 5 G.C.A § 5220 requires the OOG to publish RFP documents, announcements and notices on its website.
3. <https://governor.guam.gov/request-for-proposals-rfp/> contains RFP-GOV-2022-001 Procurement of Professional Services to provide Licensing and Permitting System to the Government Guam.

4. <https://governor.guam.gov/wp-content/uploads/2022/03/GOV-RFP-2022-01-RFP-Amendment-1-2142022.pdf> Amends the organizations units for licensing and permitting.

5. <https://governor.guam.gov/wp-content/uploads/2022/03/GOV-RFP-2022-01-RFP-Amendment-2-352022.pdf> Amends the proposal deadline to March 25, 2022, and restricts the number of personnel for participation in presentations.

6. <https://governor.guam.gov/wp-content/uploads/2022/06/GOV-RFP-2022-01-RFP-Amendment-3-with-Cover-Sheet-5272022.pdf> Amends the proposal submission deadline to June 10, 2022, and modifies the offer presentation deadline prospective dates.

7. Notwithstanding the protests herein, no notice of any automatic stay is identified on the website. No notice of any lift of stay is identified on the website. No other information than in the aforementioned paragraphs are posted.

(d) Ruling Requested

DMR respectfully requests that the Office of Public Accountability Order the following:

1. Public Auditor expedited determination of disqualification and/or recusal due to personal family relationship to Matthew C. Santos.

2. An expedited ruling voiding the Notice of Determination to Proceed pursuant to 5 G.C.A. §5425(g)(1).

3. An expedited order to stay the procurement pending resolution of this appeal pursuant to 5 G.C.A. § 5425(g) based upon the unauthorized Notice of Determination to Proceed set forth in Exhibit.

4. An order sustaining the Protest and directing the OOG to respond to questions in order to ensure the integrity of the procurement process, to protect fair competition in this RFP, and to restrict the conduct of government from engaging in unfair practices to the prejudice of all prospective offerors.

5. An order sustaining the Protest and directing the OOG to comply with good faith requirement for entry into a contract only for the term permitted by allotted funding subject to 5 G.C.A. § 22401(a)(1), (2) and (3), and a factual finding that entry into a multi-year contract without

any reasonable and significant identification of funding is an unreasonable condition imposed by the RFP in contravention of applicable federal law.

6. An order requiring the OOG to comply with posting requirements imposed by 5 G.C.A. § 5220.

7. An order requiring the OOG to comply with the record maintenance imposed by 5 G.C.A. § 5249.

(e) Declaration Re Court Action and Related Procurement Appeal

The undersigned does hereby confirm to the best of her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. 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.

RESPECTFULLY SUBMITTED on this 8th day of June, 2022.

**LAW OFFICE OF JACQUELINE TAITANO
TERLAJE, P.C.**

By:



JACQUELINE TAITANO TERLAJE

Attorney for Appellant *Data Management Resources, LLC*



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-22-004 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Thu, Jun 9, 2022 at 8:55 AM

To: Jacque Terlaje <jacque.terlaje@terlajelaw.com>, info@terlajelaw.com, procurement@guam.gov

Hafa Adai,

Please see attached Notice of Receipt of Appeal for OPA-PA-22-004. 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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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA
Auditor
Office of Public Accountability – Guam
www.opaguam.org
Tel. (671) 475-0390 ext. 204
Fax (671) 472-7951

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