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OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

AUG 23 2011

4:17 BY: *mar*
 FILE NO. OPA-PA: *11-010*

Attorneys for the Government of Guam

**THE OFFICE OF PUBLIC ACCOUNTABILITY
 HAGÁTÑA, GUAM**

In the Appeal of:)	DOCKET NO. OPA-PA-11-010
)	
DATA MANAGEMENT RESOURCES LLC,)	
Appellant)	EXHIBIT LIST
)	
)	
)	

Pursuant to the Scheduling Order issued on August 12, 2011 the Bureau of Information Technology hereby submits its exhibit list:

- A- Response to DMR protest dated July 18, 2011
- B- Email from Mary Mendiola to DMR dated April 8, 2011
- C- Notice of Termination letter to DMR, dated February 21, 2011
- D- Acknowledgement of Receipt of Termination letter, dated April 11, 2011
- E- Email from Stephen Guerrero to Ed Cruz, dated March 21, 2011

Dated this 23rd day of August, 2011.

OFFICE OF THE ATTORNEY GENERAL
 Leonardo M. Rapadas, Attorney General

By: 
 FRED NISHIHIRA
 Assistant Attorney General



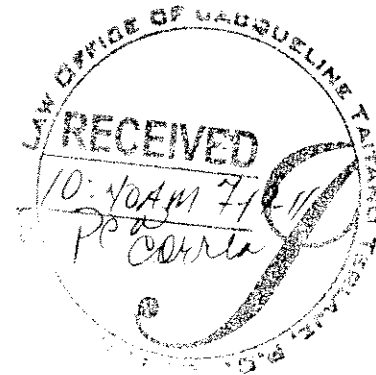


Office of the Governor of Guam

July 18, 2011

Jacqueline Taitano Terlaje
Law Offices of Jacqueline Taitano Terlaje, P.C.
888 North Marine Corps Drive, Suite 215
Tamuning, Guam 96913

RE: RESPONSE TO DMR PROTEST OF RFP-OOG-023-10



Dear Ms. Terlaje,

The Bureau of Information Technology (BIT) hereby submits its response, in line, to the protest of RFP-OOG-023-10 Termination of Negotiations noted in your letter dated April 21, 2011.

(1) BIT failed to act in good faith, as required by §5003 of Title 5 of the Guam Code Annotated in formation of the contract under the award of IFB-023-2010.

RESPONSE: BIT acted in good faith as required by §5003 of Title 5 of the Guam Code Annotated.

(2) BIT failed to act in good faith, as required by §1105 of the Guam Administrative Rules and Regulations (GAR).

RESPONSE: BIT acted in good faith as required by §1105 of the Guam Administrative Rules and Regulations (GAR). See also 5 GCA §5216 (e).

(3) BIT failed to comply with 2 GAR §3114 (I). Specifically the following:

- i. BIT failed to specify the reasons it was "unable to meet the compensation rate of your final offer;"

RESPONSE: The Government of Guam lacks funding for Fiscal Year 2011 and "is unable to meet the compensation rate of your final offer."

- ii. BIT failed to determine in writing that the compensation offered by DMR was not fair and reasonable;



Office of the Supervisor of Claims

RESPONSE: This was stated in the Termination of Negotiations Notice. "Please be informed that the Government is unable to meet the compensation rate of your final offer."

- iii. BIT failed to direct its negotiations to agree upon compensation which is fair and reasonable prior to terminating the negotiations;

RESPONSE: BIT made every effort necessary in ensuring that negotiations were fair and reasonable. The RFP committee members were present and had clear knowledge of the Government's availability of funding for this RFP.

- iv. BIT failed to make a written record stating the reasons that the contract could not be agreed upon; and

RESPONSE: BIT issued a termination notice informing DMR that the Government is unable to meet DMR's lowest proposed compensation rate. (see answer to "ii" above)

- v. BIT failed to provide written notice of the termination of negotiations within three (3) business days.

RESPONSE: See attached email from DMR confirming receipt.

The Government of Guam does not have the funding available to meet DMR's proposed compensation and thus cannot proceed with the award of RFP-OOG-023-10. Based on the above statements, DMR's protest is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Camacho Cruz".

Ed Camacho Cruz
Chief Information Officer
Bureau of Information Technology
Office of the Governor of Guam

Mary Mendiola

From: Mary Mendiola
Sent: Friday, September 1, 2011 4:01 PM
To: [redacted]
Cc: [redacted]
Subject: [redacted] - Termination of Negotiation Notice
Attachments: [redacted].pdf

Termination of Negotiation Notice attached.

Best Regards,

Mary Mendiola
DOA Data Processing Division

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EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

February 21, 2011

Richard Taitano
284 W. Chalan Santo Papa
Hagatna, Guam 96910

Re: Termination of Negotiation Notice
Request for Proposal No.: RFP-OOG-023-10
(Guam Enterprise Email System)

Dear Mr. Taitano:

Buenas Yan Hafa Adai! Thank you for submitting your best and final offer on February 4, 2011. Please be informed that the government is unable to meet the compensation rate of your final offer.

Pursuant to 2 GAR §3114(I)(4)(a) you are hereby notified that negotiations are now terminated.

Sincerely,


Ed C. Cruz
BIT Chief Information Officer

Mary Mendiola

From: Data Management Resources, LLC [dmr@dmrguam.com]
Sent: Monday, April 11, 2011 1:58 PM
To: mary.mendiola@doa.guam.gov
Cc: 'Ed Cruz'
Subject: Re: FW: Guam Enterprise Email System (RFP-OOG-023-10): Termination of Negotiation Notice

Hafa adai Mary,
Acknowledging receipt of the attached today

Sincerely,
Gina

Data Management Resources, LLC
184 W. Chalan Santa Rosa
Hagatña, Guam 96910
P.O. Box 100750
ph: 671.477.4674
fax: 671.477.3677

- Dell Certified Enterprise Architect
- VMware Enterprise Solution Provider

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On 4/11/2011 1:51 PM, MMendiola wrote:

This is a follow up. Please acknowledge receipt of this email

Best Regards,
Mary Mendiola

From: Mary Mendiola
Sent: Friday, April 08, 2011 4:01 PM
To: 'dmr@dmrguam.com'
Cc: 'Ed Cruz'
Subject: Guam Enterprise Email System (RFP-OOG-023-10): Termination of Negotiation Notice

Termination of Negotiation Notice attached.

Best Regards,

Mary Mendiola
DOA Data Processing Division

Mary Mendiola

From: Ed Cruz [ed.cruz@bit.guam.gov]
Sent: Monday, March 21, 2011 1:38 PM
To: Mary Mendiola; Claudia Acfalle; Anita Cruz; Fred Nishihira; James Canto
Subject: Fwd: Clarification on Email Budgets

Fred, Claudia,

Please see response from Stephen Guerrero of BBMR.

It is clear that Gov Guam does not have funding to proceed with the current Email RFP.

Where do we go from here?

Please advise.

Ed C. Cruz
Chief Information Officer
Bureau of Information Technology
671.929.4463

----- Forwarded message -----

From: **Stephen Guerrero** <stephen.guerrero@bbmr.guam.gov>
Date: Mon, Mar 21, 2011 at 11:22 AM
Subject: Re: Clarification on Email Budgets
To: Ed Cruz <ed.cruz@bit.guam.gov>
Cc: "B.F. Artero" <Bernadette.Artero@guam.gov>; James Canto <james.canto@guam.gov>

Ed,

My apologies for not responding sooner.

In response to your questions,

There are no specific amounts appropriated in the line department's FY2011 appropriations for the Guam Enterprise Email System. Currently, Government line departments are facing an anticipated budgetary shortfall for the remainder of FY2011.

The \$38,316.25 amount cited was derived from amounts identified by the following departments: GPD \$13,316.25, DOA \$5,000, PHSS \$15,000, DMHSA \$5,000. It is my understanding that these amounts were identified in the first quarter of FY2011 as funds available for the said RFP. Currently however, these same departments have all reported that they will incur budget shortfalls by the end

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of the fiscal year.

Let me know if I can be of further assistance.

Thanks,
Stephen

On Wed, Feb 23, 2011 at 10:00 AM, Ed Cruz <ed.cruz@bit.guam.gov> wrote:
Stephen,

1. It is BIT's understanding is that \$38,316.25 has been reserved for RFP-OOG-023-10, for email services for the Guam Enterprise Email System. Can BBMR assist by confirming the amount and provide a breakdown by agency.
2. The current best offer for the RFP is \$122,772, can the Government fund it?
3. What is the maximum amount of funds that BIT may use to fund the current current RFP? If this amount is sufficient to cover the cost for the current RFP an award can be made. If the amount is insufficient to fund the current RFP then BIT can cancell for cost. Please understand that the answer to this question will also be the cost limitation that BIT will be limited to for the remainder fiscal year should BIT elect to issue another bid.

Look forward to your response.

Regards,

Ed C. Cruz
CIO, Bureau of Information Technology
Office of the Governor of Guam
671.929.4463