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THE OFFICE OF PUBLIC ACCOUNTABILITY – GUAM

HAGÁTÑA, GUAM

In the Appeal of) DOCKET NUMBER. OPA-PA-12-007

DATA MANAGEMENT RESOURCES, LLC,) **APPELLANT'S HEARING BRIEF**

Appellant.

COMES NOW Appellant, DATA MANAGEMENT RESOURCES, LLC. (“DMR”), through undersigned counsel and hereby submits its Hearing Brief as ordered by the Office of Public Accountability (OPA) on the appeal of General Services Agency (GSA)’s arbitrary and bad faith termination of cost negotiations in Request for Proposal No. RFP/DOA-014-11 Point of Sale (hereinafter “RFP”). DMR seeks affirmation of its procurement appeal and submits the following issues for determination by the OPA:

- (i) Whether Certification of Procurement Record should be granted *In Limine*?
- (ii) Whether the Weight of Written Testimony by Deposition Transcription is equal to Oral Testimony?
- (iii) Whether GovGuam complied with 5 G.C.A. § 5216(e), 2 GAR, Div. 4, § 3114(l) and § 3115(e)(2) prior to the termination of cost negotiation and its rejection of DMR’s Best and Final Offer?
- (iv) Whether GovGuam acted in bad faith?
- (v) Whether GovGuam established any evidence of anticompetitive conduct by DMR?
- (vi) Whether GovGuam violated the automatic stay of 5 G.C.A. § 5425 and 2 GAR, Div. 4, § 9101(e)?

ORIGINAL

PROCEDURAL AND FACTUAL BACKGROUND

1
2 This appeal involves GSA RFP for a "Turn-Key" project to design, develop and implement a point-
3 of-sale system which fully integrates payment processing for all Treasurer of Guam transactions. The RFP
4 was issued by GSA on behalf of Department of Administration (DOA), Department of Revenue and
5 Taxation (DRT) and departments of the Government of Guam (collectively referred to herein as
6 "GovGuam") Agency Report, Tab. 5, ¶1.2 of RFP. A point of sale system is a valid procurement need.
7 Id., Tab 5, ¶ 1.1 of RFP. Funding for the RFP is Guam-TA-MIP-2009-1 in the amount of Three Hundred
8 Eighty-Three Thousand, Four Hundred Eighty-Three and 88/100 USD (\$383,483.88). *See* Decl. B.
9 Manglona (Jul. 6, 2012).

10
11 DMR was the sole bidder for the RFP. Agency Report, Tab 6. DMR was deemed to be the Best
12 Qualified Offeror on July 29, 2011. Id., Tab 9. Cost negotiations commenced by DMR's submission of its
13 Price Proposal on June 17, 2011. Id., Tab 11. On August 5, 2011, DMR submitted a cost breakdown for
14 consideration in the cost-negotiations. Id. On August 25, 2011, a cost negotiation meeting was held; the
15 Evaluation Committee was in attendance, in addition to Benigno Camacho, Gina Taitano and Richard
16 Taitano of DMR. On August 29, 2011, GSA requested an additional price breakdown of the cost proposal,
17 and DMR submitted its cost breakdown by module, on August 30, 2011. Id.

18
19 On September 28, 2011, by the agreement of the Evaluation Committee, GSA proffered its FIRST
20 COUNTER OFFER in the amount of Two Million, Two Hundred Ninety-Five Thousand, Five Hundred
21 Eighty-Two and 69/100 USD (\$2,295,582.69). Id., Tab 12. An additional meeting for cost negotiation was
22 held on October 5, 2011. DMR and the Evaluation Committee, consisting of the following members, were
23 in attendance:

- 24 1. Annie Duenas, DRT
- 25 2. Ken Borja, DOA
- 26 3. Geri Delgado, DOA
- 27 4. Elaine Fejeran, DRT
- 28 5. Rosita Fejeran, DOA

- 6. Thomas Ashe, BIT
- 7. Lorraine Guerrero, DRT

1
2 Notwithstanding ongoing negotiations for the RFP, Thomas Ashe, a member of the Evaluation Committee,
3 commenced efforts to develop an “in-house” point of sale system. Prior to the termination of the
4 negotiations and prior to any request for a best and final offer to conclude negotiations, GovGuam directed
5 Thomas Ashe to initialize an “in-house” point of sale system. On or about January 24, 2012, DOA directed
6 the termination of negotiations and the cancellation of the RFP.
7

8 On February 7, 2012, the RFP Evaluation Committee requested that DMR delete certain
9 requirements from its costs proposal and submit its best and final offer to GSA for consideration. Id. On
10 February 8, 2012, GSA requested that DMR submit its Best and Final Offer no later than February 10,
11 2012. Id.

12 On February 10, 2012, DMR submitted its Best and Final Offer of One Million, Eight Hundred
13 Twenty-Three Thousand, One Hundred and 00/100 USD (\$1,823,100.00). Id. On February 29, 2012,
14 DMR received a Notice of Rejection of its Best and Final Offer under RFP/DOA-014-11 based on
15 “insufficient funds for such project”. *See* Notice of Appeal, Exhibit 1. No Notice of Cancellation was
16 provided by GSA related to the RFP.
17

18 On March 13, 2012, DMR lodged its protest (hereinafter “Protest”). Id., Exhibit 2. On March 16,
19 2012, DMR received Notice of Decision on the Protest setting forth the basis of the rejection of the protest
20 as a rejection of the proposal under 2 GAR, Div. 4, Ch. 3, §3115(e)(3)(B). Id., Exhibit 3. No Notice of
21 Cancellation was provided by GSA related to the RFP.
22

23 On April 2, 2012, Appellant timely filed its Notice of Appeal to the Public Auditor.

24 Thomas Ashe terminated his employment with GovGuam on April 27, 2012. Notwithstanding this
25 termination, GovGuam continued to grant access to GovGuam financial data for the purpose of allowing a
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1 third-party to continue to provide services for a point of sale system for GovGuam without compliance
2 with Guam Procurement Law and Regulations.

3 Following the procurement appeal, DOA purported to continue administration of the appeal by
4 issuance of a Written Determination and Supplemental Determination. Further, notwithstanding the
5 automatic stay granted by Guam Procurement Law of the RFP, DOA procured and solicited hardware
6 covered by the RFP and has expended the funding source identified for this RFP.

7
8 **I. DMR'S MOTION IN LIMINE FOR CERTIFICATION OF PROCUREMENT
9 RECORD.**

10 GSA is required to submit a Certification of the Procurement Record. 5 G.C.A. §5250; 2 GAR, Div.
11 4, Ch. 12, § 12104(c)(3). On July 3, 2012, GovGuam represented to the OPA Hearing Officer that it was
12 unable to certify the procurement record. Thus, prior to proceeding in this matter, DMR respectfully
13 requests that GSA certify that the procurement record for the RFP is complete.

14
15 **II. DMR'S MOTION IN LIMINE FOR DETERMINATION OF WEIGHT OF
16 ATTACHED TO WRITTEN TESTIMONY SUBMITTED BY DEPOSITION
17 TRANSCRIPTION.**

18 DMR has submitted herewith the following Written Testimony by Deposition Transcription of the
19 following Government of Guam employees deposed before a Notary Public for Guam:

- 20 (1) Claudia Acfalle
21 (2) Thomas Ashe
22 (3) Benigno Camacho
23 (4) Elaine Fejarang
24 (5) Rosita Fejeran
25 (6) Katherine Kakigi
26 (7) Benita Manglona

27 Pursuant to the OPA Rules of Procedure, § 12108(d), the weight of the evidence submitted shall be
28 determined by the Hearing Officer. DMR respectfully requests a determination in Limine by the Hearing
Officer of the weight granted to the Deposition Transcriptions for the purpose of the issuance of

1 Subpoenas to Appear. In the event the Hearing Officer grants greater weight to oral testimony relative to
2 the submission of written testimony, DMR respectfully requests the issuance of subpoenas for the
3 Government of Guam employees identified in the Application for Subpoenas.

4
5 **III. WHERE THERE IS NO “FAIR AND REASONABLE” DETERMINATION OF**
6 **A BEST AND FINAL OFFER, PROCUREMENT LAW AND REGULATION**
7 **PROHIBIT ARBITRARY TERMINATION OF NEGOTIATIONS.**

8 This Appeal arises out of the Decision on Protest of the Method, Solicitation and Award related to
9 the rejection of DMR’s best and final offer during cost negotiations; DMR appeals the Decision based on
10 the failure of GSA to evaluate DMR’s Best and Final Offer, as “fair and reasonable”, as required by Title 2,
11 Guam Administrative Rules and Regulations, Division 4, §3114(1) and Title 5, G.C.A., §5216(e).

12 Upon negotiation for compensation for services requested under any Requests for Proposal,
13 GovGuam must make a determination of whether the Best and Final Offer is “fair and reasonable” prior to
14 termination of cost negotiations. 5 G.C.A. § 5216(e); 2 GAR, Div. 4, § 3114(l) and § 3115(e)(2); In Re
15 Appeal of Joeten Development, Inc., OPA-PA-11-012 Decision (Sep. 27, 2011)(public Auditor finds that
16 cancellation of invitation for bid violated Guam procurement law).

17
18 Guam Procurement Law as set forth in 5 G.C.A. § 5216(e) provides:

19 Award shall be made to the offeror determined in writing by the head of the
20 purchasing agency or a designee of such officer to be best qualified based on the
21 evaluation factors set forth in the Request for Proposals, and negotiation of
22 compensation determined to be fair and reasonable. If compensation cannot be
23 agreed upon with the best qualified offeror, the negotiations will be formally
24 terminated with the selected offeror. If proposals were submitted by one or more
25 other offerors determined to be qualified, negotiations may be conducted with such
26 other offeror or offerors, in the order of their respective qualification ranking, and
27 the contract may be awarded to the offeror then ranked as best qualified if the
28 amount of compensation is determined to be fair and reasonable.

(Emphasis added.) 2 GAR, Div. 4, §3114(l) further provides that GSA upon negotiation is required to
negotiate “compensation determined in writing to be fair and reasonable.”

1 In this case, GSA failed to make any determination that the Best and Final Offer submitted by DMR
2 was not fair and reasonable, as required by law. Notably, upon review of the RFP Procurement Record and
3 the Agency Report, nowhere is there any reference to any evaluation or written determination by the RFP
4 Committee or GSA of the fair and reasonable cost for the services requested under the RFP. Rather, GSA
5 unilaterally determined, absent any consultation with the RFP Committee, to reject the proposal by DMR as
6 unreasonable.

7 Similarly, in In Re Appeal of Joeten Development, Inc., *supra.*, DRT issued an invitation for bid for
8 rental space, and Joeten Development, Inc. was the sole bidder to the invitation. Following the opening of
9 the bid, DRT cancelled the invitation “due to insufficient funds.” *Id.*, at p. 4. The Public Auditor in
10 affirming the protest of Joeten Development, Inc. held that the rejection or cancellation of bids is governed
11 by 5 G.C.A. § 5225. In analyzing the cancellation of the bid, the Public Auditor further held that the
12 analysis must also include 2 GAR Div. 4, Ch. 3, § 3115, which govern cancellation after bid opening. In
13 finding in favor of Joeten Development, Inc., the Public Auditor in vacating the cancellation of the bid held
14 that GSA failed to comply with the appropriate Procurement regulations and ordered GSA to determine
15 whether the bid submitted was fair and reasonable.
16

17 GSA similarly is attempting to reject the Best and Final Offer of DMR based on insufficient funds
18 without a written determination as required by Guam Procurement Law, and Guam Administrative Rules
19 and Regulations. 2 GAR, Div. 4 §3115(d)(2) provides:
20

21 Cancellation of Solicitation: Rejection of All Bids or Proposals ... (2) After Opening.
22 (A) After opening, but prior to award, all bids or proposals may be rejected in whole
23 or in part when the Chief Procurement Officer, the Director of Public Works, or the
24 head of a Purchasing Agency determines in writing that such action is in the
25 territory’s best interest for reasons including, but not limited to:
26 (i) the supplies, services, or construction being procured are no longer required;
27 (ii) ambiguous or otherwise inadequate specifications were part of the
28 solicitation;
(iii) the solicitation did not provide for consideration of all factors or
significance to the territory;

- (iv) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (v) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
- (vi) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, and may have been submitted in bad faith.

A rejection of a proposal in whole must occur at the time of bid opening, and upon an immediate determination that the amount proposed in procurement process is wholly and completely unreasonable.

In this case, more than six (6) months of cost-negotiations occurred, prior to GSA's rejection of DMR's proposal. Once negotiation commences, GSA's conduct is governed under §3114(l), amongst other provisions. GSA commenced negotiations with DMR over a six (6) month period. Because negotiations were ongoing, GSA's rejection of DMR's Best and Final Offer absent a written determination that DMR's offer was not fair and reasonable, was erroneous.

2 GAR, Div. 4, §3115(e)(3)(B) further provides:

As used in this Subsection, *proposal* means any offer submitted in response to any solicitation, including an offer under §3111 (Small Purchases), except a bid as defined in Subsection 3115(e)(3)(a) of this Section. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction and the territory's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to: . . . (iii) the proposed price is clearly unreasonable.

GSA has qualified its rejection of DMR's Best and Final Offer as "clearly unreasonable," under 2 GAR, Div. 4, §3115(e)(B)(3). However, as noted by the Procurement Record and Agency Report, Tab 12, GSA's First Counter Offer is indisputably higher than the Best and Final Offer submitted by DMR on February 10, 2012. It is unfathomable; this independent determination of unreasonableness on February 10, 2012; when a mere five (5) months earlier, GSA proposed an offer of \$2.3 Million Dollars. Based on the hardware, software and services requested in the RFP, this is prima facie evidence of the fairness and reasonableness

1 of the Best and Final Offer submitted by DMR. More importantly, it is also indicative of other outside
2 factors influencing GSA's determination of this RFP.

3 **IV. GOVERNMENT OF GUAM ACTED IN BAD FAITH.**

4 GovGuam in the administration on the procurement at issue in this case, was required to act in
5 good faith. 2 GAR Div. 4, Chapter 1, §1105 requires GovGuam, by its employees, during the negotiation
6 and administration of all procurements to "act in good faith."
7

8 (i) GOVERNMENT OF GUAM FAILED TO ACT IN GOOD FAITH
9 WHEN AN EVALUATION COMMITTEE MEMBER WAS
10 INDEPENDENTLY DEVELOPING A POINT OF SALE SYSTEM IN
11 VIOLATION OF HIS ETHICAL RESPONSIBILITIES

12 "Public employees must discharge their duties impartially so as to assure fair competitive access to
13 governmental procurement by responsible contractors." 2 GAR, Div. 4, Chapter 11, §11102(a). During the
14 term of Thomas Ashe's service as a member of the Evaluation Committee, unbeknownst to DMR, he was
15 developing a competing point of sale system during the pendency of negotiations. As set forth in the
16 written testimony of Thomas Ashe submitted by deposition transcription, Thomas Ashe began the
17 development of an "in-house" point of sale system during the pendency of negotiations. Prior to the
18 rejection of DMR's Best and Final Offer, the Evaluation Committee member of the RFP, launched his
19 competing "in-house" point of sale system for which he currently services with GovGuam notwithstanding
20 his termination of employment. The development of this "in-house" system coincides with the arbitrary
21 rejection of DMR's Best and Final Offer. Thus, DMR submits that GovGuam's rejection was made in bad
22 faith and its rejection is merely a sham to cover-up its otherwise reprehensible conduct. Importantly, an
23 Evaluation Committee member's participation in the development of a competing "in-house" point of sale
24 system, while responsible for negotiating for the RFP, does not "foster public confidence in the integrity of
25 the territorial procurement organization." Id.
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1 (ii) GOVERNMENT OF GUAM FAILED TO ACT IN GOOD FAITH
2 WHEN IT ENTERTAINED AN UNSOLICITED OFFER DURING
3 THE PENDENCY OF COST-NEGOTIATIONS.

4 As set forth in the written testimony of Rosita Fejeran, Benita Manglona and Thomas Ashe, by
5 deposition transcription, during the pendency of the RFP negotiation, DOA entertained unsolicited offers
6 from the Bank of Guam to operate a point of sale system. Without regard to its obligations, GovGuam by
7 at least two (2) of its Evaluation Committee members to the RFP, Rosita Fejeran and Thomas Ashe,
8 entertained an unwritten offer to provide services to GovGuam for services subject to this RFP. The failure
9 to act in good faith by the Evaluation Committee members does not promote the integrity of the
10 procurement process. Subsequent to a meeting with Bank of Guam, the development of the “in-house”
11 point of sale, GovGuam in bad faith put into action its plan to arbitrarily reject DMR’s Best and Final Offer
12 prior to the close of negotiations.
13

14 **V. GOVERNMENT’S MOTION TO DISMISS SHOULD BE DENIED.**

15 GovGuam contends that dismissal of this procurement is permitted for the following reasons:

16 (1) ¶ 1.3.5 of the RFP permits the cancellation of the RFP for lack of funds and § 3115 of the Procurement
17 Rules and Regulations also grants GovGuam authority to cancel the RFP; (2) DMR has participated in
18 anticompetitive conduct because of its long-standing vendor status with GovGuam and technological
19 prowess; and (3) that the RFP is *void ab initio* because DMR’s long-standing vendor status and technological
20 prowess creates an anticompetitive environment. None of GovGuam’s arguments can be sustained as
21 addressed below.
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24 (i) RFP PROVISION INCONSISTENT WITH GUAM PROCUREMENT LAW IS
25 NOT ENFORCEABLE
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1 Because the issues dealing with § 3115 and the rejection of requests for proposals are addressed in
2 Section II of this Hearing Brief, DMR will focus this section on the unenforceability of ¶ 1.3.5 of the RFP,
3 which provides:

4 The Department may cancel this RFP; in whole or in part at any time, or reject any
5 or all proposals submitted in response, when this action is determined to be fiscally
6 advantageous to the Department or otherwise in its best interest.

7 While at first glance, ¶ 1.3.5 may grant GovGuam authority to reject at any time the RFP, rejection of the
8 RFP is governed by 5 G.C.A. § 5225 and 2 GAR Div. 4, Ch. 3, §3115. See Section II, Appellant's Hearing
9 Brief above. Absent compliance with these provisions of Guam Procurement Law, any provision in the
10 RFP is unenforceable.

11 (ii) GOVERNMENT OF GUAM HAS NO EVIDENCE OF ANTICOMPETITIVE
12 PRACTICE AND ITS MOTION TO DISMISS SHOULD BE DENIED.

13 There is no dispute that DMR is a long-standing vendor of GovGuam; nor is there a dispute that
14 the services and supplies provided by DMR to GovGuam are technological in nature. However, GovGuam
15 can present no evidence that DMR “improperly restrict[ed] maximum competition, manipulating access to
16 bid documentation.” As set forth in 2 GAR, Div. 4, Ch. 3, § 3126, anticompetitive practice is “a practice
17 among bidders or offerors which reduces or eliminates competition or restrains trade . . . such as submitting
18 collusive bids . . . or result from illicit business actions”. Inherent in any claim of anticompetitive conduct
19 is the action and/or conduct of the vendor. GovGuam cannot and will not be able to present any evidence
20 of anticompetitive conduct by DMR related to the RFP process.

21 While GovGuam complains that another potential vendor, Bank of Guam, was not provided
22 proprietary software source code, GovGuam employees involved in the RFP cannot point to any specific
23 conduct by DMR. The only evidence points to the conduct of GovGuam employees. However, this issue
24 is merely a red herring because as clearly provided in Amendment No. 4, Attachment F to the RFP, an
25 alternative to the source code was provided to assist other vendors' understanding of the scope of the RFP.
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1 Agency Report, Tab 7. Notably, when DMR requested source code information for integration of the point
2 of sale system to GovGuam's merchant service provider, DMR was denied access to the information. *See*
3 Written Testimony of Benigno Camacho by Deposition, p. 39-40.

4 GovGuam also complains and speculates about the technology prowess of DMR as a basis for an
5 anticompetitive environment. However, nowhere in GovGuam's motion or in any declaration submitted by
6 GovGuam is there any reference to any conduct of DMR. Additionally, while GovGuam makes wild
7 allegations that DMR has access to "data relevant to this procurement," there is not one reference to any
8 allegation of any inappropriate access by DMR; nor is there any statement offered to support the allegation
9 that DMR in fact has access to any data which affects the maximum competition of this RFP. Importantly,
10 GovGuam fails to advise the OPA that DMR has valid and enforceable contracts with GovGuam which
11 grants it access to various Government of Guam agencies. Additionally, as set forth by the Systems
12 Programming Administrator for DOA, responsible for handling information technology issues for the
13 DOA, DRT and Public Health, none of the data relevant to this RFP are kept in any database to which
14 DMR has access. *See* Written Testimony of Benigno Camacho by Deposition Transcription, p. 78.

15
16 (iii) DISQUALIFYING AN EXPERIENCED, QUALIFIED AND PROVEN
17 VENDOR BASED ON SPECULATION IS AGAINST PUBLIC POLICY

18 GovGuam is essentially advocating the disqualification of experienced, qualified and proven vendor.
19 Specifically, GovGuam claims that the RFP is void because of lack of competition based on a critical fact,
20 that DMR is a current and long-standing vendor for GovGuam, and that because of the type of services
21 DMR provides, it is at a distinct advantage over other offerors. Obviously, public policy would dictate the
22 non-cancellation of an RFP merely because an experienced, qualified and proven vendor participates in a
23 solicitation. While public policy demands that GovGuam maximize competition in procurement, it would
24 be foolhardy to disqualify vendors such as DMR simply because of its proven track record of providing
25 GovGuam services procured through competitive process; the unintended consequence of such action
26

1 would leave a limited pool of inexperienced vendors, would fail to create a competitive environment, and
2 subject GovGuam to greater liabilities. Thus, while once again GovGuam fails to point to any specific
3 instance of inappropriate access by DMR, it seeks to void this RFP on pure speculation and its motion
4 should be denied.

5 **VI. APPELLANT'S MOTION FOR ORDER OF CERTIFICATION AND REQUEST**
6 **TO THE SUPERIOR COURT OF GUAM FOR AN ORDER TO SHOW CAUSE**

7 DMR seeks an Order of Certification and Request to the Superior Court of Guam for an Order to Show
8 Cause and for Contempt against BENITA MANGLONA, Director of DOA. Appellant requests an Order
9 of Certification of facts by the OPA on the violation of the automatic stay of all procurement
10 administration, solicitation and award of the items subject to this procurement appeal by DOA by its
11 Director Benita Manglona. Specifically, notwithstanding the requirements of Guam Procurement Law, §
12 5425 of the Guam Code Annotated, § 9101(e) of the Guam Administrative Rules and Regulations, Division
13 4, Chapter 9, prohibiting any further administration and/or procurement or solicitation of the subject of the
14 procurement protest, DOA violated the automatic stay and has proceeded with the procurement of the
15 hardware subject to this protest.
16

17 The RFP required the following:

18 This proposal calls for an integrated POS payment and collection system. The
19 Offeror agrees to deliver hardware, software, and application programs to provide a
20 complete POS electronic data capture facility for online payments and a delivery
21 system that integrates with each participating government entity.

22 Agency Record, Tab 4, ¶ 1.1. Specifically, Section 4.2.7 of the RFP required the offerors to comply with
23 minimum mandatory requirements of the following:

- 24 • Paper-tape printer to record a hard copy of transactions
- 25 • Input device to read MICR encoding on checks
- 26 • Bar-code input device for scanning forms
- 27 • Magnetic strip reader for credit cards/debit cards
- 28 • Validation stamping device showing date, time, cashier

- Local storage for data while network is down
- Uninterruptible power supply (UPS) to ensure operation during power failures
- 50 each POS processing equipments to include 50 each workstations.

Guam Procurement Law imposes an automatic stay where a protest is timely submitted. 5 G.C.A. § 5425(g). Additionally, Guam Administrative Rules and Regulations (GAR) governing procurement provides a stay for timely protests. GAR, Division 4, Chapter 9, § 9101 (e). The provisions set forth a prohibition on GovGuam from proceeding with solicitation, procurement and award during the pendency of the protest. *Id.* Absent conditions set forth in 5 G.C.A. § 5425(g)(1) – (3), GovGuam is not permitted to proceed with the subject of the procurement. The relevant provisions provide, in part:

In the event of a timely protest under Subsection (a) of this Section or under Subsection (a) of § 5480 of this Chapter, the Territory shall not proceed further with the solicitation or with the award of the contract prior to final resolution of such protest, and any such further action is void. 5 G.C.A. § 5425(g).

(e) Stay of Procurement During Protest. When a protest has been filed within 14 days and before an award has been made, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency shall make no award of the contract until the protest has been settled unless the Chief Procurement Officer or the Director of Public Works makes a written determination, after consulting with the head of the Using Agency, or the head of the Purchasing Agency, that the award of the contract without delay is necessary to protect substantial interests of the territory. GAR, Division 4, Chapter 9, § 9101 (e).

The RFP included the offer of the following hardware:

Quantity	Description of Hardware
50	Computer Workstation with 5-yr warranty
50	UPS, with 5-yr warranty
50	Receipt printer & multi-line validation
50	5-yr warranty for Receipt printer & multi-line validation printer
50	Check Scanner
50	5-yr warranty: Check scanner
50	Barcode Scanner, with 5-yr warranty
50	Card Reader
50	5-yr warranty: Check scanner
50	Hardware Installation: Installation

1 Agency Report, Tab 10. DMR offered a total price of Three Hundred Ninety-One Thousand, Five
2 Hundred One and 70/100 USD (\$391,501.70) for the foregoing items. DOA during the pendency of this
3 procurement appeal has procured the following:

- 4 • 48 Workstations with 5 year warranty in Requisition Order Q120600077 on June 22,
5 2012 with Appropriation 5101H090600DC106250.
- 6 • 48 UPS with 5 year warranty in Requisition Order Q120600077 on June 22, 2012
7 with Appropriation 5101H090600DC106250.
- 8 • 10 Check Scanners in Requisition Order Q120600080 on August 1, 2012 with
9 Appropriation 5101H090600DC106250.
- 25 POS Printers in Requisition Order Q120600081 on August 29, 2012.
- 5 Laptops in Requisition Order Q120600082 on August 1, 2012 with Appropriation
5101H090600DC106250.

10 During the pendency of this protest, of the funding previously appropriated for this RFP, Three Hundred
11 Twenty-Four Thousand, Three Hundred Seventy-One and 60/100 USD (\$324,371.60) has been expended
12 by DOA for point of sale modification hardware. See Appellant's Exhibit 28. DMR requests for
13 certification to the Superior Court of Guam of the facts of the violation of the automatic stay provisions of
14 Guam Procurement by DOA by its Director, Benita Manglona for the procurement of hardware covered by
15 the RFP subject to stay; the request for certification is made pursuant to OPA Rules of Procedure §
16 12108(d), and 5 G.C.A. § 9238.
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CONCLUSION

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2 BASED ON THE FOREGOING, Appellant seeks the following:

- 3 (1) An Order affirming the procurement protest of DMR;
4 (2) An Order granting DMR all costs and attorney's fees, as provided by Guam law; and
5 (3) An Order certifying to the Superior Court of Guam the violation of the automatic stay of Guam
6 Procurement Law by DOA, by its Director, Benita Manglona.

7 RESPECTFULLY SUBMITTED on this 16th day of October, 2012.

8
9 **LAW OFFICE OF
JACQUELINE TAITANO TERLAJE, P.C.**

10
11 By: 
12 **JACQUELINE TAITANO TERLAJE**
13 Attorney for Appellant