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L.P. Ganacias Enterprises, Inc. dba RadioCom

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OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

JAN 29 2007

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FILE No. OPA-PA 06-003

OFFICE OF THE PUBLIC AUDITOR

In the Appeal of)	AMENDED NOTICE OF APPEAL
)	
L.P. GANACIAS ENTERPRISES, INC.)	Appeal No. OPA-PA-06-03
dba RADIOCOM)	
)	
Appellant.)	
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Appellant Information:

L.P. Ganacias Enterprises, Inc. dba RadioCom ("RadioCom")
P.O. Box 7094
Tamuning, Guam 96931

Telephone No. (671) 646-7197
Facsimile No. (671) 649-4400

Appeal Information:

A) Guam Office of Homeland Security ("OHS") through the Guam General Services Agency ("GSA").

B) Purchase Order Nos. PO66A06288 and PO66A06304 Early Warning System or Outdoor PA System ("Warning System").

C) Award being appealed was sole sourced on June 27, 2006 and June 28, 2006 by the GSA to S.E.S. USA, Inc., and RadioCom appeals from the January 9, 2007 decision of the GSA denying RadioCom's protest of the Warning System procurement.

D) Appeal is made from a decision on protest of method, solicitation or award.

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COPY

E) Names of competing bidders:

S.E.S. USA, Inc.
6527 NE 192ND Pl
Kenmore, WA 98028

Form and Filing:

1. On June 9, 2006, the OHS requested the GSA to award a contract for the Warning System to S.E.S. USA, Inc. ("SES") through a sole source procurement. On June 27, 2006 and June 28, 2006 the GSA issued "Purchase Order Nos. PO66A06288 and PO66A06304" for the Warning System to SES.

On December 5, 2006, within 14 days of learning of the procurement, RadioCom filed its formal protest ("Protest") of the GSA's determination to solicit the Warning System through a sole source procurement. RadioCom is a Guam corporation and is a vendor of a competing warning system. Pursuant to 5 G.C.A. § 5214, an agency may only acquire goods or services through sole source procurement when "the Chief Procurement Officer ... determines in writing that there is only one source for the required supply, service or construction item" As RadioCom offers an early warning system, SES was not the only source for the system. Further, pursuant to 5 G.C.A. § 5008, "[a]ll procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam" Rather than procure the warning system from RadioCom, a business licensed to conduct business on Guam, the OHS/GSA procured the Warning System from a company doing business in Washington State. RadioCom further incorporates by reference herein all grounds for this appeal as set forth in its January 18, 2007 Comment on Agency Report and the January 18, 2007 Declaration of Victoria G. Borja.

On January 9, 2007 the GSA denied RadioCom's protest and RadioCom has, therefore, exhausted all administrative remedies.

2. RadioCom requests that the Office of Public Auditor rule that the reason given by the OHS/GSA for utilizing a sole source procurement for the warning system and for denying RadioCom's Protest constitutes an abuse of discretion and that the matter be remanded to the OHS/GSA with instructions to solicit the Warning System through a sealed bid procedure as authorized by the Guam Procurement Law.

3. RadioCom hereby incorporates by reference all documents submitted in its December 19, 2006 Notice of Appeal herein, all documents submitted by the OHS in its December 29, 2006 filing with the OPA and all documents submitted by the GSA in its January 9, 2007 letter denying RadioCom's protest.

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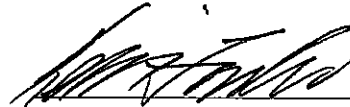
Declaration regarding court action:

RadioCom confirms that an action in court has not been commenced.

Dated this 29th day of January, 2007.

DOOLEY ROBERTS & FOWLER LLP

By:



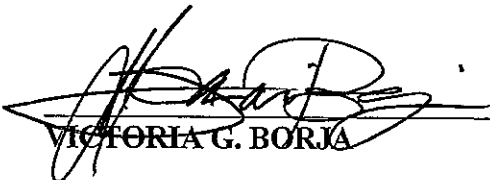
KEVIN J. FOWLER
Attorneys for Appellant
L.P. Ganacias Enterprises, Inc.
dba RadioCom

VERIFICATION

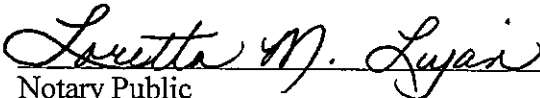
Hagåtña, Guam) ss:

I, Victoria G. Borja, being first duly sworn, do hereby depose and state that I am the Vice President & General Manager for Appellant RadioCom and that I have read the foregoing Amended Notice of Appeal and it is true of my own knowledge except as to those matters alleged upon information and belief and as to those matters, I believe them to be true.

Dated this 29th day of January, 2007.


VICTORIA G. BORJA

SUBSCRIBED AND SWORN to before me this 29th day of January, 2007.


Notary Public

LORETTA M. LUJAN
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: May 22, 2010
Suite 201 Orlean Pacific Plaza
885 S. Marine Corps Dr. Tamuning, Guam 96913