

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



# TRANSMITTAL

<b>To:</b>	<b>Mr. Rory J. Respicio</b> <b>General Manager</b> Port Authority of Guam Jose D. Leon Guerrero Commercial Port 1026 Cabras Highway, Suite 201 Piti, Guam, 96915 Phone: (671) 477-5931/35 Fax: (671) 477-2689/4445 Email: <a href="mailto:rjrespicio@portofguam.com">rjrespicio@portofguam.com</a>	<b>From:</b>	<b>Benjamin J.F. Cruz</b> <b>Public Auditor</b> Office of Public Accountability
		<b>Pages:</b>	12 (including cover page)
<b>CC:</b>	<b>Ms. Jacqueline Taitano Terlaje, Esq.</b> <b>Attorney for Appellant Data Management Resources, LLC</b> Law Office of Jacqueline Taitano Terlaje, P.C. 284 W Chalan Santo Papa Hagåtña, Guam 96910 Phone: (671) 648-9001 Fax: (671) 648-9002 Email: <a href="mailto:info@terlajelaw.com">info@terlajelaw.com</a>	<b>Date:</b>	September 26, 2024
		<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 204 (671) 472-7951

**Re:** OPA-PA-24-002 Notice of Receipt of Appeal

For Review

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Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,

Jerrick Hernandez, Auditor

[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.



## OFFICE OF PUBLIC ACCOUNTABILITY

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

Phone: (671) 475-0390 / FAX: (671) 472-7951

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September 26, 2024

Mr. Rory J. Respicio  
General Manager  
Port Authority of Guam  
Jose D. Leon Guerrero Commercial Port  
1026 Cabras Highway, Suite 201  
Piti, Guam, 96915

**VIA EMAIL: [rjrespicio@portofguam.com](mailto:rjrespicio@portofguam.com)**

Re: Notice of Receipt of Appeal – OPA-PA-24-004

Dear Mr. Respicio,

Please be advised that Data Management Resources, LLC. (hereinafter referred to as “DMR”) filed an appeal with the Office of Public Accountability (OPA) on September 25, 2024, regarding the Port Authority of Guam (PAG)’s denial of its protest decision related to the procurement for Desktop Computer Systems with Accessories (Invitation for Bid No. IFB-PAG-008-24). OPA has assigned this appeal case number OPA-PA-24-004.

Immediate action is required of PAG 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](http://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 appeal. 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, October 3, 2024**, 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, October 10, 2024**, ten work days following receipt of this notice.

When filing all required documents with our office, please provide one original and one copy to OPA (**electronic filings will be acceptable and highly encouraged, and can be emailed to [jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)**), and serve a copy to DMR.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at [jhernandez@guamopa.com](mailto:jhernandez@guamopa.com) or 475-0390 ext. 204 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 Eight Pages of the Notice of Appeal – OPA-PA-24-004

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

Jacqueline Taitano Terlaje  
**LAW OFFICE OF JACQUELINE TAITANO TERLAJE, P.C.**  
 284 W Chalan Santo Papa  
 Hagåtña, Guam 96910  
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Counsel for Appellant  
 Data Management Resources, LLC.

**PROCUREMENT APPEAL OF DENIAL OF PROCUREMENT PROTEST  
 THE OFFICE OF PUBLIC ACCOUNTABILITY**

**PART I.**

In the Procurement Appeal of	)	NOTICE OF PROCUREMENT APPEAL
	)	
	)	
	)	
DATA MANAGEMENT RESOURCES,	)	
LLC.	)	<b>DOCKET NO. OPA-PA_____</b>
	)	
Appellant.	)	
_____	)	

**PART II: APPELLANT INFORMATION**

Appellant's Name	Data Management Resources, LLC.
Appellant's Mailing Address	891 Army Drive, Suite 100 Barrigada, Guam 96913
Appellant's Business Address	891 Army Drive, Suite 100 Barrigada, Guam 96913
Appellant Representative's Direct Email Address	<a href="mailto:jacque.terlaje@terlajelaw.com">jacque.terlaje@terlajelaw.com</a>
Appellant's Phone No.	(671) 647-3674
Appellant's Facsimile No.	(671) 477-3677

Appellant is represented by legal counsel in this appeal. For purposes of this appeal, please direct correspondence to Data Management Resources, LLC. (“DMR”) counsel, Jacqueline Taitano Terlaje of Law Office of Jacqueline Taitano Terlaje, PC..

Legal Counsel	Jacqueline Taitano Terlaje
Counsel’s Mailing Address	284 W. Chalan Santo Papa, Hagatna, Guam 96910
Counsel’s Business Address	284 W. Chalan Santo Papa, Hagatna, Guam 96910
Counsel’s Direct Email Address	<a href="mailto:jacque.terlaje@terlajelaw.com">jacque.terlaje@terlajelaw.com</a>
Counsel’s Phone No.	(671) 648-9001
Counsel’s Facsimile No.	(671) 648-9002

**PART III: APPEAL INFORMATION**

- A. Purchasing Agency: Port Authority of Guam (“PAG” or the “Port”).
- B. Solicitation Number: Port Authority of Guam IFB# IFB-PAG-008-24.
- C. The Decision being appealed was provided to the Appellant on September 10, 2024. The Decision was made by the agency General Manager, Rory J. Respicio.
- D. This Appeal is made from the Decision on Protest to DMR via email on September 10, 2024.
- E. The name of the competing offerors known to Appellant are as follows:
  - 1. Computer Smart Company
  - 2. Pacific Data Systems
  - 3. ComPacific

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## **PART IV: STATEMENT OF GROUNDS FOR APPEAL**

### **A. THE GROUNDS FOR APPEAL**

#### **1. Relevant Procedural and Factual History**

The PAG issued IFB-PAG-008-24 seeking bids for Desktop Computer Systems with Accessories to the lowest priced responsive bidder. A copy of the IFB is attached to this Notice of Appeal as Exhibit A.

On June 12, 2024, DMR submitted its bid along with three other vendors. Notice of Bid Status dated June 25, 2024 was provided to DMR on June 28, 2024. A copy of the Bid Status is attached to this Notice of Appeal as Exhibit B. The Bid Status rejected DMR's bid, and provided "RECOMMENDED FOR AWARD: Pacific Data Systems Item(s) 1.0, 2.0 and 3.0 for the total bid amount of \$50,500.00".

On July 3, 2024, the Port produced the public, non-confidential portions of the procurement record for DMR, and provided the electronic files of the public procurement record on July 3, 2024, and July 5, 2024. Upon review of the Procurement Record and the public bid submitted by Pacific Data Systems (PDS), DMR protested the recommendation of award to Pacific Data Systems based on the bidder's failure to provide descriptive literature indicating compliance with the IFB requirements. A copy of the Protest is attached hereto as Exhibit C.

The Port's notice on June 28, 2024, of the Bid Status with recommendation to Pacific Data Systems meant that the Port selected a non-responsive offeror contrary to Guam law. The General Terms and Conditions on Page 23 of 50 of the IFB, Item 21. Descriptive Literature provides as follows:

Rejection of the Bid will be required if the descriptive literature(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the bid.

Based on the foregoing, DMR submits that Pacific Data Systems' bid submission in response to PAG-008-2024 fails to comply with the IFB requirements as defined in IFB Item 21 General Terms and Conditions on page 23 of 50 of the IFB, and thus fails to conform to the standards for determination as the lowest responsible bidder for this IFB, as specified in IFB Item 18. Standard for Determination of Lowest Responsible Bidder on page 23 of 50 of the IFB.

Pacific Data Systems was a non-responsive bidder. Notwithstanding, the Port denied DMR's Protest on September 10, 2024. A true and correct copy is attached to this Notice of Appeal as Exhibit D.

## **2. Timeliness of Protest and Appeal**

The Port's June 25, 2024, decision to select a non-responsive offeror constituted a mistake. 5 GCA §5425(a) requires that Protests must be made within 14 days of the issues leading to the protest being known by the Protester. DMR was notified of the recommendation for award to Pacific Data Systems on June 28, 2024. DMR timely lodged its protest with Port on July 12, 2024.

This Appeal comes within fifteen days after PAG issued its protest decision to DMR on September 10, 2024, and is within the fifteen-day protest appeal period set by 5 GCA § 5425(e). Therefore, both DMR's agency level protest and subsequent appeal to the OPA met the timeliness standards required by applicable law and regulation.

**3. Basis for Protest and Appeal: PAG has selected a non-responsive offeror.**

The Port's recommendation for award on June 25, 2024, to Pacific Data Systems is inconsistent with Guam law and the terms and conditions of the IFB. The Port's decision to award the bid to a non-responsive bidder is a *de facto* unfair pricing advantage that aggrieves other offerors. PAG's decision to declare Pacific Data Systems a responsive bidder constitutes a fundamental and material change the specifications that only benefitted Pacific Data Systems, as no other bidder was allowed to deviate from complying with the terms of the IFB.

**4. Additional basis for Appeal: PAG's Decision was erroneous.**

(a) The Port's denial of DMR's protest on untimeliness was erroneous. The Port's denial of DMR's protest on the basis that DMR should have known the unresponsiveness of Pacific Data Systems on June 12, 2024 is incorrect. On July 3, 2024, the Port produced the public, non-confidential portions of the procurement record for DMR on July 3, 2024, and provided the electronic files of the public procurement record on July 3, 2024, and July 5, 2024. The Port's assertion that DMR was required to know and should have known that the Port would disregard the General Terms and Conditions of the IFB and declare Pacific Data Systems a responsive bidder was unknown until, at the earliest, June 28, 2024. Upon obtaining copies of the documents released by PAG, DMR was made aware of Pacific Data Systems non-responsiveness. Therefore, the Port's denial of DMR's protest on the basis that DMR should have protested within fourteen (14) days of the bid opening was erroneous.

(b) The Port's denial of DMR's protest for not specifically requesting for the rejection of Pacific Data Systems' non-responsive bid, and not specifically requesting evaluation of the



bid within Guam law and the General Terms and Conditions was also in error. DMR's protest of Pacific Data Systems non-responsiveness inherently assumes that DMR was seeking the Port's compliance with Guam Procurement Law and the General Terms and Conditions of the bid. Additionally, on July 12, 2024, DMR further provided a Letter of Concern regarding the non-responsiveness of other bidders' submissions directing the Port's attention to requiring the Port's compliance with the evaluation of bids within the confines of law.

(c) The Port's denial of DMR's protest for untimeliness based on the issuance of a Notice of Award was incorrect. The Port denied DMR's protest because the Notice of Award has issued. The denial of DMR's protest on this basis is clearly erroneous. Guam law specifically provides a right to appeal a Decision within fifteen (15) days. The Port notified DMR of its recommendation to Pacific Data Systems on June 28, 2024. DMR is unaware of the actual date of any Notice of Award, and the appropriate conduct of the Port under Guam law required the Port to stay the procurement upon DMR's protest dated July 12, 2024. Taking procurement action pending an appeal was not only arbitrary and capricious, but may constitute official misconduct.

## B. RULING REQUESTED

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

- (1) That PAG's decision to make an award to Pacific Data Systems despite its failure to adhere to the requirements of the IFB was arbitrary, capricious and an abuse of discretion;
- (2) That PAG's denial of DMR's protests was unreasonable, arbitrary, capricious

and an abuse of discretion;

- (3) That PAG's rejection of DMR's bid based on high price was unreasonable, arbitration, capricious and an abuse of discretion;
- (4) That the automatic stay of procurement arising under 5 G.C.A. §5425(g) be confirmed in place;
- (5) That PAG be required to review all bid submission, determine the responsiveness of all bidders, and award the IFB DMR as the lowest priced responsive and responsible bidder under the IFB; and
- (6) For such further relief that the OPA deems appropriate.

C. SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS

Submitted with this appeal are the following supporting exhibits, evidence, and documents:

- A. Invitation for Bid, IFB-PAG-008-24
- B. Bid Status, June 28, 2024
- C. DMR Bid Protest, July 12, 2024
- D. Decision on Protest, September 10, 2024

**PART V: DECLARATION OF COURT ACTION**

The undersigned does hereby confirm that to the best of her knowledge, no case or action concerning the IFB that is 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 25<sup>th</sup> day of September, 2024.

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

By:

  
\_\_\_\_\_  
JACQUELINE TAITANO TERLAJE  
Attorney for Data Management Resources, LLC.

## VERIFICATION

I, Richard C. Taitano, Chief Executive Officer of Appellant Data Management Resources, LLC. hereby declares under penalty of perjury of the laws of Guam that I have read the foregoing Notice of Appeal and that it is true and correct to the best of my knowledge, except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.

Dated on this 25<sup>th</sup> day of September, 2024.



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RICHARD C. TAITANO  
Appellant, Data Management Resources, LLC.



Jerrick Hernandez <jhernandez@guamopa.com>

## OPA-PA-24-004 Notice of Receipt of Appeal

**Jerrick Hernandez** <jhernandez@guamopa.com>  
To: "Rory J. Respicio" <rjrespicio@portofguam.com>  
Cc: ADMIN DESK <info@terlajelaw.com>, "Jessica L. Toft" <jtoft@portofguam.com>

Thu, Sep 26, 2024 at 1:43 PM

Hafa Adai,

Please see the attached Notice of Receipt of Appeal for OPA-PA-24-004. 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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Best Regards,



Jerrick J.J.G. Hernandez, MA, CGFM, CFE, CICA, CGAP  
*Accountability Auditor*

**Office of Public Accountability**  
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<https://www.opaguam.org/>



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