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OPA-PA-25-002 - 1) Appellant Glimpses of Guam, Inc.'s Opposition to Purchasing Agency's Motion to Dismiss; and 2) Appellant Glimpses of Guam, Inc.'s Opposition to Purchasing Agency's Motion to Confirm Determination.**Janet Sardoma** <ofc.manager@pacificlawyers.law>

Mon, May 12, 2025 at 3:19 PM

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Cc: "Daniel J. Berman" <djberman@pacificlawyers.law>, "Christine A. Pangelinan" <chrisap@pacificlawyers.law>

Dear Mr. Hernandez:

Please see the attached documents for filing in the above matter. Please note the following:

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Number of documents attached:	Two (2)
Name of each attached document:	1) Appellant Glimpses of Guam, Inc.'s Opposition to Purchasing Agency's Motion to Dismiss. 2) Appellant Glimpses of Guam, Inc.'s Opposition to Purchasing Agency's Motion to Confirm Determination.
Total number of pages attached:	Thirty-Three (33)

Please return filed/received copies by email.

Regards,

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2 attachments



OPA-PA-25-002 Oppo to Mtn to Confirm Det.pdf

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Attorneys for Appellant:
GLIMPSES OF GUAM, INC.

**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF

GLIMPSES OF GUAM, INC.,

Appellant.

Appeal No.: OPA-PA-25-002

**APPELLANT GLIMPSES OF GUAM, INC.'S
OPPOSITION TO PURCHASING
AGENCY'S MOTION TO DISMISS**

COMES NOW Appellant GLIMPSES OF GUAM, INC. (hereinafter "Glimpses"),
by and through counsel undersigned, and hereby respectfully opposes the Purchasing
Agency's Motion to Dismiss filed by GUAM VISITORS BUREAU ("GVB").

I. INTRODUCTION

Glimpses submitted a bid on a GVB Request for Proposal ("RFP") for a contract
to perform marketing and advertising services. Another bidder named "The Manhita
Group" or "The Manhita Team" was evaluated as the number 1 bidder. The Manhita
Team was evaluated based on its partners or team that included SKIFT, Big Fish
Creative Inc. ("Big Fish") and Ruders Integrated Marketing Strategies ("RIMS").
Although RIMS submitted no bid individually, only RIMS was awarded the contract
from GVB. GVB kept concealed the fact that it awarded the contract to a non-bidder and
neglected to notify Glimpses of its right to appeal, inducing Glimpses not to
immediately act to challenge a substantial interests determination or to otherwise
exhaust administrative remedies.

II. BACKGROUND

On December 27, 2024, GVB issued RFP 2025-002. *See*, GVB Procurement Record bates (herein "GVB") no. GVB-0001 to GVB-0047.

Four bidders responded to the RFP, including The Manhita Team and Glimpses. The Manhita Team's bid was "a collaborative submission" with SKIFT occupying the role of "Global Tourism Strategists," Big Fish occupying the role of "Creative Strategists," and RIMS occupying the role of "Lead Agency." GVB's Motion to Dismiss at 2; *also* GVB0707. This collaborative submission emphasized that The Manhita Team was an "alliance of three distinguished agencies, each contributing specialized expertise[.]" GVB0707. The Manhita Team bid promoted that it was specifically offered by and, if successful, was to be awarded to a "team" because the bid promised "strategic collaboration," "shared expertise," "shared commitment," "synergy," and "a partnership," among other things. GVB0707-08. The organizational chart in The Manhita Team bid indicated that the "project management lead team" would be run by individuals from Big Fish and RIMS. GVB0709. The Manhita Team included individuals from all three agencies (SKIFT, Big Fish, and RIMS) in significant creative and strategic roles should the team win the contract. GVB0710-19 (presenting biographic information and job descriptions for The Manhita Team, including two individuals from SKIFT and nine from Big Fish).

GVB evaluated the four (4) bidders and The Manhita Team was ranked number 1 with 271 points. Motion to Dismiss at 2. No individual bid from RIMS was offered or considered. *See id.*

On January 21, 2025, GVB sent Notice of Intent to Award to Glimpses and advised that RIMS shall be awarded the new contract. *See* GVB Notice of Intent to Award to Glimpses' Motion for Summary Judgment, Exhibit "3", GVB 0925 to 1187.¹

¹ References to numbered exhibits "1" through "10" herein are the exhibits in support of Glimpses' Motion for Summary Judgment filed on May 7, 2025.

On January 27, 2025, Glimpses served its Sunshine Law and FOIA Request for all documents that included "1. The bid submissions of RIMS ... correspondence and documents of all kind and nature related to bid submissions for GVB RFP No. 2025-002." *See* Glimpses Sunshine Law Request, Exhibit "4", GVB 0308 to GVB 0311.. There was no bid submission of RIMS. Glimpses was unaware of this fact at this time and was requesting to review the winning and other RFP bids.

On February 1, 2025, GVB refused to produce and concealed all of The Manhita Team's bid, but produced that part of the procurement record that they elected and preferred to show to Glimpses.

Based on the impending statutory deadline, Glimpses to remain timely, was forced to file a Notice of Protest on February 4, 2025. *See*, GVB 0341 to GVB 0355. Therein, at p. 6, line 5, Glimpses invoked the statute 5 GCA § 5425(g). This is the automatic stay provision prohibiting Guam from proceeding further with the award of the contract before resolution of the timely protest. At that time GVB continued to keep The Manhita Team's bid concealed, which prevented Glimpses from ascertaining that RIMS, the entity awarded the contract, was not the offeror of any bid individually, but was instead in reality a non-bidder for the RFP.

On February 24, 2025, GVB Notice to Glimpses was issued that the Award was necessary without delay to protect the substantial interests of Guam. *See* GVB 0392 to 0655 at Exhibit "5". However, this GVB Notice failed to "inform the protestant of its right to administrative and judicial review" as required by 5 GCA § 5425(c). As such, this Notice was non-compliant and void of legal effect for violation of procurement law.

Although Glimpses did not protest the substantial interests determination within two days, Glimpses was not in possession of The Manhita Team's bid at the time so as to form any good faith belief or opinion on this twist in the road, especially given no notice of a right to administrative and judicial review.

On March 11, 2025, Glimpses filed its Notice of Procurement Appeal to the Office of Public Accountability ("OPA"). GVB1188-1201. Therein, Glimpses specifically invoked the automatic stay of 5 GCA § 5425(g). GVB1193, 1194 and 1196. Glimpses noted that "no RFP or prior Notice to the Governor, Legislature or the public of Guam exists that converted this procurement into a state of declared public emergency so as to apparently circumvent the automatic stay on the issue of a new contract to its preferred bidder." GVB1193. Glimpses pointed out that it was "unaware of a state of public emergency caused by a suspense of advertising and marketing services for GVB to tourist markets for the purpose of the conduct of OPA review." *Id.* Glimpses stressed the absence of any state of public emergency, making the urgency speculative and unsupported. *Id.* Glimpses noted that had such a state of emergency existed it would have been stated up front in the RFP. *Id.* Glimpses argued "the last-minute conversion of this procurement into a sole source emergency contract is not warranted." GVB1194. Glimpses also noted that GVB failed to explain how and why GVB management and employees cannot perform marketing and advertising actions without RIMS. *Id.*

On March 12, 2025, the OPA Public Auditor informed GVB that "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 **Wednesday, March 19, 2025**, five work days following this Notice of Receipt of Appeal." Notice of Receipt of Appeal – OPA-PA-25-002, dated March 12, 2025 (emphasis in original).

Although OPA stressed that the procurement record was required no later than March 19, 2025, GVB failed to do that and counsel for Glimpses first received the procurement record late on Friday, March 21, 2025 at the end of the afternoon. On March 21, 2025, which was two days after the OPA deadline and more than ten days after Glimpses was required to file its appeal. *See* GVB Procurement Record cover sheet, (received stamp March 24, 2025), at Exhibit "6". Only on March 24, when Glimpses'

counsel returned for work on Monday morning, did Glimpses have an opportunity to review and study for the first time disclosure of The Manhita Team bid. *See* Exhibit "1" ("The Manhita Team" bid excerpt first 7 pages). But, no bid was submitted individually by RIMS. Only belatedly on March 21, Glimpses learned for the first time that on March 4, 2025, GVB acted, without notice to the public, to execute a contract solely with RIMS. *See* Decision Denying Protest, Exhibit "7" at ¶14, p. 3 at GVB 1st Supp. Record, GVB 1202 to 1206 (Apr. 21, 2025). The executed RIMS/GVB Contract was provided with the belated Record.

On March 24, 2025, service was made on Glimpses of the GVB Decision Denying Protest. *See* Decision Denying Protest dated March 21, 2025 at Exhibit "7". Importantly, the GVB decision denying protest was dated March 21, 2025, but delivery was delayed until March 24, 2025. *See id.* (time stamp 10:37 a.m. on March 24, 2025).

Going back to the GVB evaluation, "The Manhita Team" was ranked first with 271 points. However, only RIMS received a contract from GVB, not "The Manhita Team." *See* Exhibit "1" ("The Manhita Team" bid excerpt first 7 pages).

On April 10, 2025, Glimpses filed Comments on the GVB Agency Report asserting, in the most specific terms, that no contract can be awarded to a non-bidder like RIMS. *See*, Exhibit "11" attached hereto Comments on the GVB Agency Report (without exhibits "1" to "8").

On April 17, Glimpses filed a Second Notice of Protest of Procurement, challenging even more specifically the contract to RIMS and the substantial interests determination, in part because the statutory language of warning of right to appeal and challenge was omitted. *See*, Exhibit "12" attached hereto Glimpses Second Notice of Protest of Procurement (without exhibits "1" to "8").

III. POINTS AND AUTHORITIES

A. GVB's Purported Notice of a Public State of Emergency and Necessity to Protect Substantial Interests of Guam Dated February 24, 2025 Is Void

5 GCA § 5250 provides that:

No procurement award shall be made unless the responsible procurement officer certifies in writing under penalty of perjury that he has maintained the record required by § 5249 of this Chapter and that it is **complete and available for public inspection**. The certificate is itself a part of the record. (emphasis added)

GVB alleges that a February 24, 2025, Notice of Determination of Award Without Delay has sheltered GVB from compliance with 5 GCA § 5425(g) (Automatic Stay). *See* Exhibit "5". However, GVB has failed to comply with the Guam Procurement Code in several respects.

First, GVB failed to make the complete procurement record available for inspection before making a procurement award. 5 GCA § 5250. The Notice of Receipt of Appeal set a mandatory deadline for producing the record for the procurement solicitation of no later than Wednesday, March 19, 2025, five work days from the notice. GVB first signed and provided counsel for Glimpses the procurement record late on Friday, March 21, 2025, which was only ready for attorney review the next work day on March 24 (when the Decision was served). *See* GVB Procurement Record cover sheet, (received stamp March 24, 2025), Exhibits "6" and "7", respectively. Additionally, GVB produced a first supplemental submission of procurement record on April 25, 2025, well after this deadline. Continuing this trend, GVB produced a second supplemental submission of procurement record on May 8, 2025. Both supplements of record, could and should have been produced in a timely manner in response to Glimpses FOIA request. Until and unless that was done, or at least certified as done, violations should be found.

Second, GVB must comply with 5 GCA § 5425(c) Decision (2) and "inform the protestant of its right to administrative and judicial review." Here, the Decision

attempt to consider the effect on the procurement system's integrity when it overrode the automatic stay. See *URS Fed. Servs., Inc. v. United States*, 102 Fed. Cl. 664, 673-74 (2011).

B. No State of Public Emergency Exists

GVB has failed to identify what, if anything, changed from the time of the RFP to the time of the substantial interest determination to trigger a new state of emergency. If nothing new occurred during that time, GVB has failed to reasonably explain to any degree why, if a state of emergency truly existed, GVB failed to mention the severe emergency in the RFP. GVB has failed to explain how and why GVB management and employees cannot perform marketing and advertising actions without RIMS. *Id.* GVB has likewise failed to explain why it kept the alleged extreme urgency undisclosed until it received a protest from an unsuccessful bidder that was not withdrawn upon GVB's request. The lack of satisfactory explanation is troubling, and the reason that procurement determinations and reviews require transparency. Converting this procurement to an emergency contract in an effort to expedite an award to RIMS, who did not even make an individual bid is improper on many levels.

C. GVB Should be Equitably Estopped from Relying on its Procurement Law Defenses

The doctrine of equitable estoppel prevents the GVB from relying on a two-day deadline under 5 GCA § 5425(g) to challenge the substantial interests determination when the GVB itself concealed the right to appeal, concealed the essential Manhita bid, and concealed the key fact that the individual entity awarded the contract was not an offeror or bidder at all but just one of three entities that was part of an alliance formed as The Manhita Team. Likewise, equitable estoppel prevents GVB from relying on any defenses based on Procurement Regulations or an alleged failure to exhaust administrative remedies as put forth in the instant Motion.

Equitable estoppel is "the doctrine by which a person may be precluded by his act or conduct, or silence when it is his duty to speak, from asserting a right which he

Denying Protest served on March 24, 2025 (Exhibit "7") is utterly devoid and omits any statutorily required language that informs Glimpses of its rights to protest and appeal. Likewise, GVB's notice dated February 24, 2025 omits the critical and statutorily required availability of objection and appeal rights within two (2) days rights. See Exhibit "5".

Third, GVB failed to issue its Decision Denying Protest first – that is the statutory order – required by the code. At Section 5425(c), the Decision is required prior to the use and invocation of Section 5425(g)(2) and (3). The reason is clear. A protestant must be informed of their right to administrative and judicial review within the extremely short period of two (2) days after receipt of Notice of Determination of Award Without Delay.²

Fourth, § 5425(g)(3) is dependent on § 5425(c)(2). Without the Decision and statutorily required information given to a protestant of the right to administrative review, the protestant cannot know that he has merely two (2) days to challenge a finding of an alleged state of emergency or substantial interests of Guam.³ In this case, the override of the automatic stay was arbitrary, capricious and an abuse of agency discretion. See Exhibit "5". This is because the only thing attached to justify the Notice was a consultant's findings of what was advisable to procure. *Id.* GVB made no serious

² The protestant can of course always appeal an agency decision "to the Public Auditor within fifteen (15) days after receipt by the protestant of the notice of decision." See *Pac. Data Sys., Inc. v. Guam Dep't of Educ.*, 2024 Guam 4, ¶21, citing 5 GCA § 5425(e). A protestant can challenge a procurement on "any phase of solicitation or award including, but not limited to, specifications preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer." See *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 84, citing 2 GAR Div. 4 § 9101(c)(2). It is possible that many different events that spring from the same solicitation can trigger a protest. *Id.* citing *Guam Imaging*, 2004 Guam 15 ¶ 28 (citing 26 GAR § 16901(c)(2)). Sometimes, the announcement of an award can reveal new facts that form a basis for a protest. See *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 88. A challenge to the failure to legally implement the automatic stay survives the signing of a contract because the agency acts at its peril by going forward into a contract improperly, and will be subject on appeal to the reviewer's power to restore the status quo. *Id.* at 149.

³ *Techconsulting, LLC v. United States*, 129 Fed. Cl. 208, 215 (2016). The automatic stay provision cannot function, as intended, if potential bid protestors do not know how long they have to file before they lose their right to an automatic stay.

would otherwise have had." *Mobil Oil Guam, Inc., v. Young Ha Lee*, 2004 Guam 9, ¶24. 6 GCA § 5106(3) states there is a conclusive presumption "whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief he cannot, in any litigation arising out of such declaration, act or omission be permitted to falsify it." *Id.* Equitable estoppel is available as a defense. *Story-Bernardo v. Gov't of Guam*, 2023 Guam 27, ¶38.

Equitable estoppel requires that: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct will be acted upon, or act in such a manner that the party asserting the estoppel could reasonably believe that he intended his conduct to be acted upon; (3) the party asserting the estoppel must be ignorant of the true state of the facts; and (4) he must rely upon the conduct to his injury. *Guam Resorts, Inc. v. G.C. Corp.*, 2013 Guam 18, ¶61. Here all four elements are met:

(1) GVB was apprised of the fact that although The Manhita Team was the offeror, RIMS—a non-bidder, was awarded the contract, the substantial interests determination deadline would pass **before** Glimpses would or even could learn that the offeror (The Manhita Team) and the entity awarded the contract (RIMS) did not match at all because GVB held back this information;

(2) GVB intended that Glimpses would act upon GVB's conduct of concealing the fact that RIMS was not the offeror and not challenge the substantial interests determination in time or otherwise act to exhaust the administrative remedies GVB alleges Glimpses failed to do;

(3) Glimpses was ignorant at this crucial time of the true state of the facts—that RIMS was only one of three entities making up an alliance as the true offeror; and

(4) Glimpses relied upon GVB's conduct to its injury by not more directly and more promptly protesting the substantial interests determination which it would have done but for GVB's concealment and delay. *See Guam Resorts, Inc.*, 2013 Guam 18, ¶61.

Denial of the Motion to Dismiss is warranted. *See Phillips*, 2025 Guam Trial Order LEXIS 1, *17.

In summary, GVB knew it had the bid only from Manhita, knew the Glimpses FOIA required production, knew Glimpses was ignorant of the Manhita bid and Glimpses relied on the representation that GVB award to RIMS would be consistent only with a Bid received from RIMS.

Federal courts have applied the doctrine of equitable estoppel in procurement cases. *See DePaul Indus. v. City of Eugene*, 2018 U.S. Dist. LEXIS 144340, *11 (D. Or. Aug. 23, 2018) (denying the City's motion to dismiss in part where the deceptive nature of the RFP process estopped the City from arguing that the plaintiff should have exhausted their remedies by filing a protest). Thus far, courts in Guam recognize that dismissal is inappropriate without at the very least engaging in a balancing analysis as to whether misconduct by Government officials shows the doctrine of equitable estoppel applies to preclude the Government's procurement law defenses. *See Phillips v. Gov't of Guam*, 2025 Guam Trial Order LEXIS 1, *17 (explaining that the doctrine of equitable estoppel may apply to prevent a Government argument and denying the Government's Motion to Dismiss). Based on applicable procurement case law, equitable estoppel should be applied.

CONCLUSION

Glimpses submits that GVB's Motion to Dismiss should be denied.

DATED this 12 day of May, 2025.

Respectfully submitted,

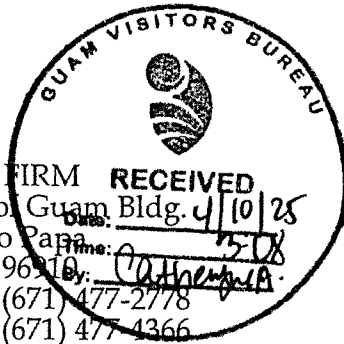
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EXHIBIT “11”



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Attorneys for Appellant:
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BEFORE THE GUAM VISITORS BUREAU

APR 10 2025

IN THE APPEAL OF
GLIMPSES OF GUAM, INC.,
Appellant.

Docket No. OPA-PA-002

McDONALD LAW OFFICE LLC

Received By: CJR

APPELLANT'S COMMENTS ON THE
PURCHASING AGENCY REPORT AND
STATEMENT

These Comments on the Purchasing Agency Report and Statement issued March 26, 2025 by the Appellant GLIMPSES OF GUAM, INC. ("Glimpses") were set forth in its April 2, 2025 Notice of Second Procurement Protest filed and served on Guam Visitors Bureau ("GVB") and its legal counsel on April 2, 2025.

Only on March 21, 2025, "The Manhita Team" bid was first disclosed. This is despite the Glimpses Sunshine Law and Freedom of Information Act Request demanding all of the GVB procurement record. This FOIA was served on GVB on January 27, 2025. See Exhibit "4". On March 24, 2025, Decision Denying Protest was served on Glimpses. See Exhibit "7". On March 26, 2025, the GVB Agency Report and Statement was issued.

On April 2, 2025, Glimpses filed and served its Notice of Second Procurement Protest on GVB and its counsel.

The GVB Agency Report fails and refuses to disclose that the GVB awarded contract is to a non-bidder (RIMS), and GVB only evaluated a bid from "The Manhita Team". Further, the GVB Agency Report failed to disclose their violation of procurement law at 5 GCA § 5425(c) (Disclosure of a right to "administrative and judicial review"); and, concealed their refusal to produce the key evidence of "The

COPY

Manhita Team" bid on or before February 1, 2025 as was required by the Glimpses FOIA served January 27, 2025. Last, the GVB Agency Report is not compliant with an "Agency Report" because it is not signed by the GVB Chairman of the Board or its President or any GVB officer, nor is the Report even on GVB Letterhead. Instead, only Attorney McDonald signed it on McDonald Law Firm Letterhead. *See* 2 GAR § 12105 (Agency Report). Without a compliant GVB Agency Report, no clock could start to run on a deadline for Comments from the Appellant.

BACKGROUND

The names of competing Bidders, Offerors, or Contractors known to Appellant are: "The Manhita Team"; Galaide; and, Greenlight.

On December 27, 2024, GVB issued RFP 2025-002.

On January 17, 2025, "The Manhita Team" submitted its bid. *See* Exhibit "1", a true and accurate excerpt copy of The Manhita Team bid, Bates No. GVB0697 through GVB074, attached. Likewise, on January 17, 2025, Glimpses also timely submitted its bid.

On January 17, 2025, GVB evaluated four (4) bidders was completed and The Manhita Team was ranked number 1 with 271 points. *See* Exhibit "2", GVB Evaluations of four (4) bidders, attached.

On January 21, 2025, GVB sent Notice of Intent to Award to Glimpses and advised that Ruders Integrated Marketing Strategies ("RIMS") shall be awarded the new contract. *See* Exhibit "3", GVB Notice of Intent to Award, attached.

On January 27, 2025, Glimpses served its Sunshine Law and FOIA Request for all documents that included "1. The bid submissions of RIMS ... correspondence and documents of all kind and nature related to bid submissions for GVB RFP No. 2025-002". *See* Exhibit "4", attached.

Yet on February 1, 2025, GVB refused to produce and concealed "The Manhita Team" bid, and only produced that part of the procurement record that they preferred to show to Glimpses.

On February 4, 2025, Glimpses filed and served its Notice of Procurement Protest.

On February 24, 2025, GVB Notice was issued that the Award was necessary without delay to protect the substantial interests of Guam. *See* Exhibit "5", attached. However, the GVB Notice failed to comply with 5 GCA § 5425(c) Decision (2) "inform the protestant of its right to administrative and judicial review".

On March 11, 2025, Glimpses filed its Notice of Procurement Appeal to the Office of Public Accountability ("OPA"). Therein, at p. 3, Glimpses invoked the automatic stay of 5 GCA § 5425(g).

On March 21, 2025, GVB signed its Procurement Record. *See* GVB Procurement Record cover sheet, Exhibit "6", attached. Glimpses received for the first time disclosure of "The Manhita Team" bid. *See* Exhibit "1". In contrast, no bid was submitted individually by RIMS. Therein, Glimpses learned for the first time that on March 4, 2025, GVB acted, without notice to Glimpses or the public, to allegedly execute a contract with RIMS. *See* Decision Denying Protest, Exhibit "7" at ¶14, p. 3. However, no such RIMS and GVB contract has been disclosed or produced to Glimpses thus far.

On March 24, 2025, service was made on Glimpses of the GVB Decision Denying Protest. *See* Exhibit "7", Decision Denying Protest dated March 21, 2025, attached. Therein, GVB made first disclosure that an actual contract was executed by GVB with RIMS, although no copy of such contract has been produced or disclosed to Glimpses.

In the evaluation, Glimpses was ranked third with 220 points and "The Manhita Team" was ranked first with 271 points. However, only non-bidder RIMS received a contract from GVB, but not "The Manhita Team". *See* Exhibit "1" ("The Manhita Team" bid excerpt first 7 pages).

1
2 **1. No Individual RIMS Bid Was Ever Submitted in Response to the RFP**

3 Based on the surprise and belated required disclosure of the GVB Procurement
4 Record, the OPA and Glimpses may now review and see that "The Manhita Team"
5 submitted a comprehensive bid for the award of the contract. *See* Exhibit "1". Fourteen
6 (14) times "The Manhita Team" is named in their bid submission. Exhibit "1".
7 However, GVB has no intention and, according to its documents, will not award or
8 execute any contract with "The Manhita Team". The latest reports and documents from
9 DRT show that no such "Team" was incorporated, is not a filed partnership and nor a
10 dba of any actual companies associated with the "Team"; that are, Big Fish Creative,
11 Inc., Ruder Integrated Management Services, Inc. and SKIFT.

12 Instead, the DRT documents available reveal that corporation papers do exist for
13 a separate "Manhita Corporation" (1998) and "Manhita Guam LLC" (2012) which are
14 duly authorized and established corporations. None of the available recorded papers
15 from DRT relate to "The Manhita Team". "Manhita Guam LLC" was organized on
16 August 8, 2012 for the purpose of "coin-operated ..." laundry facilities; and, "Manhita
17 Corporation" was formed on March 27, 1997 to engage in operation of a "bar and
18 restaurant". *See* Exhibit "8", DRT filed Manhita Articles of Organization and
19 Incorporation, respectively. Review of DRT filings supports only the thesis that The
20 Manhita Team is not only an illusion, but misrepresents other duly registered and
21 existing Guam corporations with no legal connection to this "Team".

22 GVB has zero factual basis in the procurement record to assume or conclude, as it
23 did, that: "Big Fish and RIMS partnered" and "... a formal partnership, formed to
24 respond to the ICAESS RFP ..." existed. *See* Decision Denying Protest at pg. 2, ln. 18,
25 Exhibit "7". Moreover, GVB called the prevailing bidder as "RIMS' submission ...".
26 *Id.* at pg. 3, ln. 18-19; *also*, p. 4, ln. 3 ("RIMS/Manhita submission" and "Skift"). GVB
27 cannot make a case that any partnership entity of "The Manhita Team" exists; and even
28

1
2 if it did, the award could only be to "The Manhita Team" – an informal collaboration of
3 three (3) separate entities.

4 The bid documents that Manhita filed, and what GVB recognized, was received
5 as "The Manhita Team" bid. This is confirmed in the Evaluation sheets. Specifically,
6 the actual evaluations of GVB were made only on the understanding and express
7 finding that "Manhita" or "The Manhita Group" was a bidder on the RFP. See Exhibit
8 "2", Evaluations at GVB0243, GVB0255, GVB0256, GVB0265, GVB0266, GVB0275 and
9 GVB0276. At no time was RIMS evaluated as a sole bidder. In a final analysis, it
10 appears this group represented themselves as either a partnership or a joint venture
11 entity.

12 No stretch can be made that "The Manhita Team" may call itself a dba of RIMS.
13 It is clear that Big Fish Creative Inc. and SKIFT are significant and perhaps major parts
14 or partners in this bid. Because this "Team" is not a dba, a partnership (or a joint
15 venture) that requires identification and a government filing or approval to create such
16 fictitious entity, the bid is a misrepresentation of another individual party or company
17 who was awarded the contract; i.e. RIMS. The non-bidder RIMS has been individually
18 awarded the sole contract for the marketing services required by the RFP. GVB is not
19 allowed to accept, select and award a public contract to a individual party who was not
20 evaluated and had no individual bid timely submitted in response to the RFP of GVB.

21
22 **2. GVB's Purported Notice of a Public State of Emergency and Necessity to**
Protect Substantial Interests of Guam Dated February 24, 2025 Is Void

23 GVB alleges that a February 24, 2025 Notice of Determination of Award Without
24 Delay has sheltered GVB from compliance with 5 GCA § 5425(g) (Automatic Stay). See
25 Exhibit "5". However, GVB has failed to comply with the Guam Procurement Code in
26 several respects.

27 First, GVB must comply with 5 GCA § 5425(c) Decision (2) and "inform the
28 protestant of its right to administrative and judicial review". Here, the Decision

Denying Protest served on March 24, 2025 (Exhibit "7") is utterly devoid and omits any statutorily required language that informs Glimpses of its rights to protest and appeal. Likewise, GVB's notice dated February 24, 2025 omits the critical and statutorily required notice of appeal rights. See Exhibit "5".

Second, GVB failed to issue its Decision Denying Protest first – in the statutory order – required by the code. At Section 5425(c), the Decision is required prior to use and invoke Section 5425(g)(2) and (3). The reason is clear. A protestant must be informed of their right to administrative and judicial review within the extremely short period of two (2) days after receipt of Notice of Determination of Award Without Delay.¹

Third, § 5425(g)(3) is dependent on § 5425(c)(2). Without the Decision and statutorily required information given to a protestant of the right to administrative review, the protestant cannot know that he has merely two (2) days to challenge a finding of an alleged state of emergency or substantial interests of Guam.² In this case, the override of the automatic stay was arbitrary, capricious and an abuse of agency discretion. See Exhibit "5". This is because the only thing attached to justify the Notice was a consultant's findings of what was advisable to procure. *Id.* GVB made no serious

¹ The protestant can of course always appeal an agency decision "to the Public Auditor within fifteen (15) days after receipt by the protestant of the notice of decision." See *Pac. Data Sys., Inc. v. Guam Dep't of Educ.*, 2024 Guam 4, ¶21, citing 5 GCA § 5425(e). A protestant can challenge a procurement on "any phase of solicitation or award including, but not limited to, specifications preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer." See *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 84, citing 2 GAR Div. 4 § 9101(c)(2). It is possible that many different events that spring from the same solicitation can trigger a protest. *Id.* citing *Guam Imaging*, 2004 Guam 15 ¶ 28 (citing 26 GAR § 16901(c)(2)). Sometimes, the announcement of an award can reveal new facts that form a basis for a protest. See *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 88. A challenge to the failure to legally implement the automatic stay survives the signing of a contract because the agency acts at its peril by going forward into a contract improperly, and will be subject on appeal to the reviewer's power to restore the status quo. *Id.* at 149.

² *Techconsulting, LLC v. United States*, 129 Fed. Cl. 208, 215 (2016). The automatic stay provision cannot function, as intended, if potential bid protestors do not know how long they have to file before they lose their right to an automatic stay.

attempt to consider the effect on the procurement system integrity when it overrode the automatic stay. See *URS Fed. Servs., Inc. v. United States*, 102 Fed. Cl. 664, 673-74 (2011).

Fourth, to the present, GVB has not disclosed any contract executed by either "The Manhita Team", or RIMS, despite the duty to do so under the procurement law requiring the full record of the procurement to be filed and produced with the whole GVB procurement record on appeal.

3. Glimpses' Incorporation by Reference of Notice of Procurement Protest Served February 4, 2025

Glimpses incorporates by reference as if fully set forth herein all of the terms and claims made and set forth in its Notice of Procurement Protest served on February 2, 2025 and its Notice of Procurement Appeal filed and served on March 11, 2025.

CONCLUSION

The GVB Agency Report is not compliant with the legal requirements of 2 GAR § 12105; fails to disclose the RIMS contract actually signed and given to a non-bidder; and, omits an explanation of why and how it failed to comply with 5 GCA § 5425(c).

DATED this 10 day of April, 2025.

Respectfully submitted,

BERMAN LAW FIRM
Attorneys for Appellant
GLIMPSES OF GUAM, INC.

By:



DANIEL J. BERMAN

EXHIBIT “12”

BERMAN LAW FIRM
Suite 503, Bank of Guam Bldg.
111 Chalan Santo Papa
Hagåtña, Guam 96910
Telephone No.: (671) 477-2778
Facsimile No.: (671) 477-4366

RECEIVED

APR 02 2025

McDONALD LAW OFFICE LLC

Received By: Roi

Time/Entered: 3:08pm

Attorneys for Protestant:
GLIMPSES OF GUAM, INC.

BEFORE THE GUAM VISITORS BUREAU

IN THE PROTEST OF

GVB RFP No. 2025-002

GLIMPSES OF GUAM, INC.,

NOTICE OF SECOND
PROCUREMENT PROTEST

Protestant.

To: Regine Biscoe Lee, President and CEO
Guam Visitors Bureau

Protestant Information

Name: Glimpses of Guam, Inc. ("Glimpses")

Mailing Address: 161 US Army Juan C. Fejeran Street
Barrigada Heights, Guam 96913

For purposes of this Protest, please direct filings and
correspondence to Glimpses' legal counsel:

Daniel J. Berman, Esq.
Berman Law Firm
Suite 503, Bank of Guam Building
111 Chalan Santo Papa
Hagatna, Guam 96910

Business Address: 161 US Army Juan C. Fejeran Street
Barrigada Heights, Guam 96913

Email Address: djberman@pacificlawyers.law

Daytime Contact No.: 671-477-2778

Fax No.: 671-477-4366



COPY

Protest Information

A. Purchasing Agency: Guam Visitors Bureau

B. Procurement No.: GVB RFP 2025-002 Integrated Communications, Advertising and Event Support Service

C. Decision being protested was made on March 21, 2025, by Gerald S.A. Perez, Deputy General Manager, which was received by undersigned counsel on March 24, 2025. A copy of said Decision Denying Protest is attached hereto as Exhibit "7".

D. Protest is made from the Decision Denying Protest and Award.

E. Names of competing Bidders, Offerors, or Contractors known to Protester: "The Manhita Team"; Galaide; and, Greenlight.

F. Only on March 21, 2025, "The Manhita Team" bid was first disclosed. This is despite the Glimpses Sunshine Law and Freedom of Information Act Request served on GVB on January 27, 2025. Exhibit "4".

G. On March 24, 2025, Decision Denying Protest was served on Glimpses. Exhibit "7".

Statement Supporting the Protest

1. Background

Between January 1, 2024 and December 26, 2024, Glimpses was issued and held a Contract for the GVB marketing services.

On December 27, 2024, GVB issued RFP 2025-002.

On January 17, 2025, "The Manhita Team" submitted its bid. See Exhibit "1", a true and accurate excerpt copy of The Manhita Team bid, Bates No. GVB0697 through GVB074, attached. Likewise, on January 17, 2025, Glimpses also timely submitted its bid.

On January 17, 2025, GVB evaluated four (4) bidders was completed and The Manhita Team was ranked number 1 with 271 points. See Exhibit "2", GVB Evaluations of four (4) bidders, attached.

1
2 On January 21, 2025, GVB sent Notice of Intent to Award to Glimpses and
3 advised that Ruders Integrated Marketing Strategies ("RIMS") shall be awarded the
4 new contract. *See Exhibit "3", GVB Notice of Intent to Award, attached.*

5 On January 27, 2025, Glimpses served its Sunshine Law and FOIA Request for all
6 documents that included "1. The bid submissions of RIMS ... correspondence and
7 documents of all kind and nature related to bid submissions for GVB RFP No. 2025-
8 002". *See Exhibit "4", attached.*

9 Yet on February 1, 2025, GVB refused to produce and concealed "The Manhita
10 Team" bid, but produced that part of the procurement record that they elected and
11 preferred to show to Glimpses.

12 On February 24, 2025, GVB Notice was issued that the Award was necessary
13 without delay to protect the substantial interests of Guam. *See Exhibit "5", attached.*
14 However, the GVB Notice failed to comply with 5 GCA § 5425(c) Decision (2) "inform
15 the protestant of its right to administrative and judicial review".

16 On March 11, 2025, Glimpses filed its Notice of Procurement Appeal to the Office
17 of Public Accountability ("OPA"). Therein, at p. 3, Glimpses invoked the automatic
18 stay of 5 GCA § 5425(g).

19 On March 21, 2025, GVB signed its Procurement Record. *See GVB Procurement*
20 *Record cover sheet, Exhibit "6", attached.* Glimpses received for the first time
21 disclosure of "The Manhita Team" bid. *See Exhibit "1".* In contrast, no bid was
22 submitted individually by RIMS. Therein, Glimpses learned for the first time that on
23 March 4, 2025, GVB acted, without notice to Glimpses or the public, to allegedly execute
24 a contract with RIMS. *See Decision Denying Protest, Exhibit "7" at ¶14, p. 3.* However,
25 no such RIMS and GVB contract has been disclosed or produced to Glimpses thus far.

26 On March 24, 2025, service was made on Glimpses of the GVB Decision Denying
27 Protest. *See Exhibit "7", Decision Denying Protest dated March 21, 2025, attached.*

Therein, GVB made first disclosure that an actual contract was executed by GVB with RIMS, although no copy of such contract has been produced or disclosed to Glimpses.

In the evaluation, Glimpses was ranked third with 220 points and "The Manhita Team" was ranked first with 271 points. However, only RIMS received a contract from GVB, not "The Manhita Team". See Exhibit "1" ("The Manhita Team" bid excerpt first 7 pages).

2. No Individual RIMS Bid Was Ever Submitted in Response to the RFP

Based on the surprise and belated required disclosure of the GVB Procurement Record, the OPA and Glimpses may now review and see that "The Manhita Team" submitted a comprehensive bid for the award of the contract. See Exhibit "1". Fourteen (14) times "The Manhita Team" is named in their bid submission. Exhibit "1". However, GVB has no intention and, according to its documents, will not award or execute any contract with "The Manhita Team". The latest reports and documents from DRT show that no such "Team" was incorporated, is not a filed partnership and nor a dba of any actual companies associated with the "Team"; that are, Big Fish Creative, Inc., Ruder Integrated Management Services, Inc. and SKIFT.

Instead, the DRT documents available reveal that corporation papers do exist for a separate "Manhita Corporation" (1998) and "Manhita Guam LLC" (2012) which are duly authorized and established corporations. None of the available recorded papers from DRT relate to "The Manhita Team". "Manhita Guam LLC" was organized on August 8, 2012 for the purpose of "coin-operated ..." laundry facilities; and, "Manhita Corporation" was formed on March 27, 1997 to engage in operation of a "bar and restaurant". See Exhibit "8", DRT filed Manhita Articles of Organization and Incorporation, respectively. Review of DRT filings supports only the thesis that The Manhita Team is not only an illusion, but misrepresents other duly registered and existing Guam corporations with no legal connection to this "Team".

GVB has zero factual basis in the procurement record to assume or conclude, as it did, that: "Big Fish and RIMS partnered" and "... a formal partnership, formed to respond to the ICAESS RFP ..." existed. *See* Decision Denying Protest at pg. 2, ln. 18, Exhibit "7". Moreover, GVB called the prevailing bidder as "RIMS' submission ...". *Id.* at pg. 3, ln. 18-19; *also*, p. 4, ln. 3 ("RIMS/Manhita submission" and "Skift"). GVB cannot make a case that any partnership entity of "The Manhita Team" exists; and even if it did, the award could only be to "The Manhita Team" – an informal collaboration of three (3) separate entities.

The bid documents that Manhita filed, and what GVB recognized, was received as "The Manhita Team" bid. This is confirmed in the Evaluation sheets. Specifically, the actual evaluations of GVB were made only on the understanding and express finding that "Manhita" or "The Manhita Group" was a bidder on the RFP. *See* Exhibit "2", Evaluations at GVB0243, GVB0255, GVB0256, GVB0265, GVB0266, GVB0275 and GVB0276. At no time was RIMS evaluated as a sole bidder. In a final analysis, it appears this group represented themselves as either a partnership or a joint venture entity.

No stretch can be made that "The Manhita Team" may call itself a dba of RIMS. It is clear that Big Fish Creative Inc. and SKIFT are significant and perhaps major parts or partners in this bid. Because this "Team" is not a dba, a partnership (or a joint venture) that requires identification and a government filing or approval to create such fictitious entity, the bid is a misrepresentation of another individual party or company who was awarded the contract; i.e. RIMS. The non-bidder RIMS has been individually awarded the sole contract for the marketing services required by the RFP. GVB is not allowed to accept, select and award a public contract to a individual party who was not evaluated and had no individual bid timely submitted in response to the RFP of GVB.

3. **GVB's Purported Notice of a Public State of Emergency and Necessity to Protect Substantial Interests of Guam Dated February 24, 2025 Is Void**

GVB alleges that a February 24, 2025 Notice of Determination of Award Without Delay has sheltered GVB from compliance with 5 GCA § 5425(g) (Automatic Stay). See Exhibit "5". However, GVB has failed to comply with the Guam Procurement Code in several respects.

First, GVB must comply with 5 GCA § 5425(c) Decision (2) and "inform the protestant of its right to administrative and judicial review". Here, the Decision Denying Protest served on March 24, 2025 (Exhibit "7") is utterly devoid and omits any statutorily required language that informs Glimpes of its rights to protest and appeal. Likewise, GVB's notice dated February 24, 2025 omits the critical and statutorily required notice of appeal rights. See Exhibit "5".

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review, the protestant cannot know that he has merely two (2) days to challenge a finding of an alleged state of emergency or substantial interests of Guam.² In this case, the override of the automatic stay was arbitrary, capricious and an abuse of agency discretion. See Exhibit "5". This is because the only thing attached to justify the Notice was a consultant's findings of what was advisable to procure. *Id.* GVB made no serious attempt to consider the effect on the procurement system integrity when it overrode the automatic stay. See *URS Fed. Servs., Inc. v. United States*, 102 Fed. Cl. 664, 673-74 (2011).

Fourth, to the present, GVB has not disclosed any contract executed by either "The Manhita Team", or RIMS, despite the duty to do so under the procurement law requiring the full record of the procurement to be filed and produced with the whole GVB procurement record on appeal.

4. Glimpses' Incorporation by Reference of Notice of Procurement Protest Served February 4, 2025

Glimpses incorporates by reference as if fully set forth herein all of the terms and claims made and set forth in its Notice of Procurement Protest served on February 2, 2025 and its Notice of Procurement Appeal filed and served on March 11, 2025.

Ruling Requested

Glimpses requests that the Requests for Proposal be voided, and that any Contract awarded to non-bidder RIMS be invalidated and the contract entered be terminated.

Alternatively, Glimpses requests that GVB seek independent re-evaluation of the bids submitted for this procurement. The resulting failure of RIMS to submit any individual bid has subverted the purpose of this procurement and is cause to re-evaluate the bids.

² *Techconsulting, LLC v. United States*, 129 Fed. Cl. 208, 215 (2016). The automatic stay provision cannot function, as intended, if potential bid protestors do not know how long they have to file before they lose their right to an automatic stay.

Declaration Re No Court Action

Pursuant to 5 GCA Chapter 5 § 5425(g), unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Protest has been commenced in court. All parties are required to and 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.

Glimpses wishes to thank GVB for the opportunity to serve the Guam community presented by this RFP. Glimpses looks forward to your prompt and expeditious resolution of this protest.

DATED this 2 day of April, 2025.

Respectfully submitted,

BERMAN LAW FIRM
Attorneys for Protestant
GLIMPSES OF GUAM, INC.

By:



DANIEL J. BERMAN