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FILE NO OPA-PA: 14-007

9 **OFFICE OF PUBLIC ACCOUNTABILITY**

10 In the Appeal of
11 PACIFIC DATA SYSTEMS, INC.,
12 Appellant.

Docket No. OPA-PA 14-007

**PDS' REPLY TO GVB'S RESPONSE TO
THE OPA'S JULY 29, 2014 ORDER**

13 The Appellant Pacific Data Systems, Inc. ("PDS") replies as follows to
14 GVB's Response to the OPA's July 29, 2014 Order.

15 **I. THE APPEAL IN OPA-PA 14-003 DID NOT PRECLUDE GVB
16 FROM CONSIDERING PDS' SUBSEQUENT PROTEST**

17 GVB argues that 5 GCA § 5425(g) provides no guidance as to whether an
18 agency may consider additional protests filed during the pendency of an appeal to the
19 OPA. PDS disagrees. The automatic stay only prohibits an agency from proceeding
20 further with the solicitation or the award of a contract. It does not prohibit the agency
21 from considering a second protest.

22 To so read the statute would be most unfortunate. If the automatic stay
23 precluded agency consideration of a second protest, that would also include second
24 protests filed at the agency level prior to any appeal to the OPA. For example, a party
25 may file a protest with the agency, and a few days later uncover grounds for a second
26 protest. In addition, a different party may also wish to protest. If there were multiple
27 protests, but the agency could only consider one at a time, many months would be
28 added to the protest process.

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2 GVB also seeks to distinguish the OPA's ruling in *In the Appeal of Pacific*
3 *Data Systems, Inc.*, OPA-PA 12-012 by saying that the OPA had issued a Final
4 Administrative Decision in the pending PDS appeal to the OPA. However, PDS was
5 referring to the GSA delay in processing another protest. In any event, the OPA
6 Decision and Order of September 28, 2012 explicitly required GSA to rule not only on
7 PDS's pending protest, but on all other pending protests from other vendors related to
8 the IFB. At the time, GSA was refusing to process any of the pending protests from any
9 vendor because of the pending PDS appeal to the OPA. The OPA clearly rejected GSA's
10 position and ordered GSA to resolve all pending protests within thirty days.

11 **II. THIS APPEAL IS TIMELY**

12 The simple question asked by the OPA in its July 29, 2014 Order was
13 whether the instant appeal is timely, and the simple answer is that it is since it was filed
14 within fifteen days of GVB's denial of the PDS protest. However, rather than respond
15 to that specific question, GVB incorporated its previous argument regarding timeliness.
16 PDS will therefore respond.

17 There is no possible way anybody can determine whether a bid or offer is
18 compliant with the procurement specifications without comparing the bid or offer with
19 the specifications. After receiving a Notice of Award to G4S on February 27, 2014, PDS
20 submitted a Freedom of Information Act Request to GVB on March 4, 2014. That
21 Request was attached as Exhibit B to the GVB Motion to Dismiss in OPA-PA 14-003,
22 and is attached to this Brief as Exhibit 1 for the convenience of the Hearing Officer.
23 GVB responded to PDS on March 10, 2014. That response was attached as Exhibit D to
24 the GVB Motion to Dismiss in OPA-PA 14-003, and is attached to this Brief as Exhibit 2.

25 In its Request, PDS requested the "bid package submitted by G4S for
26 GVB-2014-00MS." GVB refused to produce that bid package, citing 2 GAR
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2 § 3109(v)(2)(C). Without access to the G4S bid package, PDS was obviously not in a
3 position to file a specific protest on the grounds that the G4S bid was non-compliant.
4 Nonetheless, given the enormous discrepancy in bid prices, PDS believed that GVB was
5 obligated to seek a confirmation of the bid from G4S pursuant to 2 GAR § 3109(m)(3),
6 and filed a protest based upon GVB's failure to do so. That is the subject matter of
7 OPA-PA 14-003.

8 It was not until May 1, 2014, when GVB filed its Agency Report in OPA-
9 PA 14-003, that PDS had access to the G4S bid, which in this case was in the form of the
10 G4S Unpriced Technical Proposal. PDS was then in a position to compare the G4S
11 Proposal with the procurement specifications. PDS noted several areas of extreme non-
12 compliance, and timely filed its protest with GVB on May 12, 2014. GVB denied the
13 PDS protest by letter dated June 10, 2014. *See* Exhibit B to PDS appeal. PDS timely filed
14 its appeal to the OPA on June 25, 2014. *See* 15 GCA § 5425(e).

15 Before closing, PDS notes that delay in the processing of this protest was
16 caused by GVB. Once GVB had issued its Notice of Award, there was no reason for
17 GVB not to make public the G4S Unpriced Technical Offer. Nevertheless, GVB refused
18 to provide that document to PDS in response to the PDS Freedom of Information Act
19 Request. GVB cited 2 GAR § 3109(b)(2)(C) as justification for its withholding. It is true
20 that that section states that "after award" the unpriced technical offer of the successful
21 bidder shall be disclosed. This is distinct from the opening of a sealed bid in a single
22 stage procurement, where the bid is immediately available for public inspection, and
23 potential protestants can promptly determine whether the bid is compliant with the
24 specifications.

25 It is difficult to understand why there should be any difference regarding
26 public disclosure of the proposal in the multi-step sealed bidding procedure. In fact,
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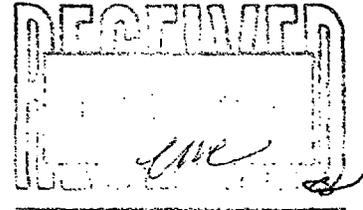
PDS

Pacific Data Systems

March 4, 2014

Via Hand Delivery

Mr. Karl Pangelinan
General Manager
Guam Visitors Bureau (GVB)
401 Pale San Vitores Road
Tumon, Guam 96913



RE: Freedom of Information Act

Dear Mr. Pangelinan:

Reference the process for Freedom of Information Act (Section 10103 of Title 5 Guam Code Annotated), Pacific Data Systems request copies of the following information:

1. The bid package submitted by G4S for GVB-2014-00MS.
2. All communications (emails, letters, faxes, documents, billings, etc.) between GVB and G4S, between December 30, 2013 and March 4, 2014.
3. Documentation related to any meetings between the Guam Visitor Bureau and G4S between December 30, 2013 and March 4, 2014 related to GVB-2014-002MS. Including who attended these meeting(s), meeting notes or documents, presentations, or any electronic recordings of the meeting(s).
4. Any and all technical evaluations that were performed by GVB regarding procurement GVB-2014-002MS.

Please call me at 300-0229 or email me at jsm@pdsguam.com when this information is available for pickup.

Respectfully Submitted,

John Mantanona
Government Account Manager



March 10, 2014

Mr. John Mantanona
Government Account Manager
Pacific Data Systems
185 Illipog Dr., Suite 204A
Tamuning, Guam 96913

RE: "Sunshine Act" request, 04 March 2014

Håfa Adai Mr. Mantanona,

We are in receipt of your "Sunshine Act" request dated 04 March 2014. Requested things and documents are available for your inspection at our offices during normal business hours. Please note that we will not provide a "bid package submitted by G4S for GVB-2014-00MS". Please see 2 Guam Admin. R. & Reg. §3109(v)(2)(c) and 5 Guam Code Ann. §10108(l). Otherwise, copies of these things and documents will be provided upon request. Please be aware that pursuant to 5 Guam Code Ann. §10203(b), a fee will be charged for this service.

Senseramente'

Jon Nathan Denight
Jon Nathan Denight
Acting General Manager

