OFFICE OF PUBLIC ACCOUNTABILITY BERMAN O'CONNOR & MANN PROCUREMENT APPEALS Suite 503, Bank of Guam Bldg. 22/15 2 111 Chalan Santo Papa TIME: 11-15 WAM CIPM BY: AG Hagåtña, Guam 96910 3 Telephone No.: (671) 477-2778 FILE NO OPA-PA: 14-013 Facsimile No.: (671) 477-4366 4 Attorneys for Appellant: 5 PACIFIČ DATA ŠYSTEMS, INC. 6 7 OFFICE OF PUBLIC ACCOUNTABILITY 8 Docket No. OPA-PA 14-013 9 In the Appeal of MOTION TO ENFORCE AUTOMATIC 10 PACIFIC DATA SYSTEMS, INC., STAY 11 Appellant. 12 The Appellant Pacific Data Systems, Inc. ("PDS") moves the Public Auditor to 13 enforce the automatic stay in this procurement, and as grounds therefore states as 14 follows: 15 16 I. ARGUMENT 17 On November 17, 2014, PDS protested IFB GPA-072-14. Guam Power Authority ("GPA") denied the PDS protest by letter dated November 21, 2014. PDS then timely 18 appealed GPA's denial of its protest on December 9, 2014. 19 20 PDS then filed a second protest with GPA on November 24, 2014, on different grounds. GPA has taken no action on this protest despite the passage of almost two 21 months. 22 GPA has basically ignored the automatic stay mandated by 5 GCA § 5425(g). On 23 December 19, 2014, GPA issued a Request for Quotation ("RFQ"). Since services 24 requested to be bid under this RFQ are included within the services covered by this 25 procurement, PDS promptly filed another protest on December 22, 2014. That protest is 26 27

28

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attached as Exhibit "1" to this Brief. GPA has not responded to this protest despite the passage of time.

GPA has recently continued to ignore the automatic stay by the issuance of three additional RFQs on January 14 and 15, 2015, for services covered under the subject procurement. GPA's action forced PDS to file yet three more protests with GPA, which are attached as Exhibits "2", "3" and "4" to this Brief.

Finally, in an e-mail dated January 16, 2015, PDS was requested by GPA to provide an estimate of the scope of work and time frame to transfer PRI Line Services from PDS, which currently provides this service, to GTA. *See* Exhibit "5". This apparently results from an RFQ for which PDS was not requested to bid and has no knowledge. PDS is legally obligated to respond to this request, but the request itself is improper since the service GPA has requested to be transferred from PDS to GTA is within the procurement and therefore subject to the automatic stay.

It appears GPA is under the misimpression that it may evade the automatic stay by the expedient of issuing RFQs. However, there is no exception for RFQs to the automatic stay. In fact, if an agency could avoid the automatic stay by simply dividing up the procurement and issuing RFQs, the automatic stay would be entirely nullified.

PDS has called this problem to the attention of D. Graham Botha, attorney for GPA, by letter dated January 16, 2015, which is attached as Exhibit "6". Undersigned counsel has not received any response to this letter.

The Public Auditor has authority to enforce the automatic stay. See Order Granting Motion Re: Automatic Stay dated September 20, 2013, in In the Appeal of JMI Edison, OPA-PA-13-010. PDS requests that the Public Auditor immediately order GPA not to proceed further with the solicitation or with the award of any contract pending final resolution of this appeal and all pending protests of PDS. In addition, PDS

*In the Appeal of Pacific Data Systems, Inc.*Case No. OPA-PA 14-003
Motion to Enforce Automatic Stay requests that any contracts entered into by GPA and any third party as a result of the RFQs be declared void and of no effect. See 5 GCA § 5425(g). DATED this Aday of January, 2015. Respectfully submitted, BERMAN O'CONNOR & MANN Attorneys for Appellant PACIFIC DATA SYSTEMS, INC. By:

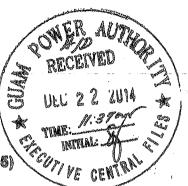


COPY

December 22, 2014

Mr. John M. Benavente, P.E. Interim General Manager Guam Power Authority P. O. Box 2977 Agana, GU 96932-2977 RECEIVED
DEC 2 2 2014
GPA
PROCUREMENT

via hand delivery



Subject: PROTEST of GPA Request for Quote RFQ 27443(FY15)

Dear Mr. Benavente:

PDS now files this procurement protest under G.C.A. 5 § 5425(a) regarding the above referenced procurement. PDS has filed this protest in order to call to GPA's attention the following issues related to this Request for Quote (copy attached as Exhibit 1).

1. The services requested to be bid under this Request for Quote (30Mb MetroEthernet services between GPA Macheche Substation and GPA Fadian Office), were previously bid by GPA in IFB GPA-072-14 and this procurement is currently under protest and procurement appeal. Thus, these services are subject to a Stay, reference 5 GCA §5425(g). This RFQ is a violation of the Stay provisions of the Guam Procurement law as noted and should not be allowed to proceed.

GPA is reminded that PDS has filed a timely protest of this procurement and no further action can be taken until this protest has been duly reviewed and an appropriate determination made (5 GCA §5425(g)).

Sincerely,

John Day President

xc: Ms. Jaime L. C. Pangelinan - Supply Management Administrator

Exhibit 1: GPA Request for Quote RFQ 27443(FY15)

185 Nipog Drive, HBC Suite 204A, Tamuning, GU 96913 Main: (671) 300-0200 | Fax: (671) 300-0265 | www.pdsguam.com



ATURIDÂT ILEKTRESEDÂT GUAHAN P.O.BOX 2977 · AGANA, GUAM U.S.A. 96932-2977

Stophanie Imasa/Dawn

Tel: (671) 648-3054/3055 Fax: (671) 648-3165

E-Mail Address: smtalleron@gpagwa.com Accountability lovoartialltv Conspetence Openness Value Please respond as soon as possible. Request for Quotation Date: but no later than: (RFQ) No.: 27443(FY15) December 19, 2014 12:00 P.M., December 22. 2014 VENDOR: Please furnish price quotation, delivery time and

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term based on CIF. Destination GPA for the Items listed below.

Please respond by the above date Quote Date: Telephone:

Delivery/Completion Data Required; 1 Week after Notice to Proceed (NTP) Delivery Oate Offered:

Terms: NET (30) THIRTY DAYS Prices Good For:

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Offering recyclable and for blodegradable products. () YES ()NO

Please separate your offer of recyclable and/or biodegradable products from regular products

NOTICE: Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property, 5GCA Section 5253, enacted by P.L. 28-24 and amended by P.L. 28-98:

If a contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while or government of Guarn Property, with the exception of public highway. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twentyfour hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider falls to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may and temporarily any contract for services until consciive action has been taken.

THIS IS NOT AN ORDER NÖ. OTY. DESCRIPTION **Unit Price** Extended Price LOT To provide the Guam Power Authority with 30Mbps Metro Ethernet WAN Connection between the following location: - Macheche Substation to Fadian Facility (Server Room) Scope of Work: Service Level Agreement (SLA): Provider must provide SLA that will address guaranteed response times, escalation procedures and the terms for any refunds/ credits: The terms of this Service Level Objectives shall minimally address: - Network Availability of 99.99% - Packet delivery rate of 99,99% - Network latency of 10ms round trip - Mean Time to Repair (MTTR) 2 hours * Provider shall describe guaranteed level of bandwidth for the proposed data services " Provider shall provide a description of how the SLA is monitored, with statistic, charts and how these statistics are calculated "Provider must provide monthly bandwidth usage statistics and reports in .pdf format via email by COB 3rd work day of the following month All requests for Dolivery Extensions will be Closely Strutinized as at items/services are crucial to new Gustomer installations, maintenance, and on-going projects. Thank you for your response Note: If you are complie to provide a price quote please annotate "NO CLICTE" and return this Facto: Duom Fejeran

via hand dolivery

January 16, 2015

Mr. John M. Benavente, P.E. Interim General Manager Guam Power Authority P. O. Box 2977 Agana, GU 96932-2977

Subject: PROTEST of GPA Request for Quote RFQ 27444

Dear Mr. Benavente:

PDS now files this procurement protest under G.C.A. 5 § 5425(a) regarding the above referenced procurement. PDS has filed this protest in order to call to GPA's attention the following issues related to this Request for Quote (copy attached as Exhibit 1).

1. The services requested to be bld under this Request for Quote (5Mb Metro Ethernet WAN Connection for the following locations to the Fadian Server Room: (1) Hagatna Customer Service Satellite (2) Tenjo Diesel Power Plant (3) Agana Substation (4) Talofofo Substation (5) Apra Height Substation (6) Umatac Substation (7) Yigo Substation), were previously bid by GPA in IFB GPA-072-14 as Item A4 on the Bid Form and this procurement is currently under protest and procurement appeal. Thus, these services are subject to a Stay, reference 5 GCA §5425(g). This RFQ is a violation of the Stay provisions of the Guam Procurement law as noted and should not be allowed to proceed.

GPA is reminded that PDS has filed a timely protest of this procurement and no further action can be taken until this protest has been duly reviewed and an appropriate determination made (5 GCA §5425(g)).

Sincerely,

John Day President

xc: Ms. Jaime L. C. Pangelinan - Supply Management Administrator Bill Mann, Attorney for Pacific Data Systems

Exhibit 1: GPA Request for Quote RFQ 274442

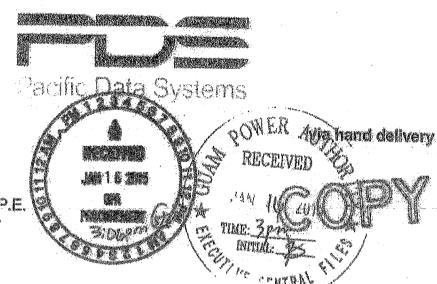
185 Illpog Drive, HBC Suite 204A, Tamuning, GU 96913 Main: (671) 300-0200 | Fax: (671) 300-0265 | www.pdsguam.com



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January 16, 2015

Mr. John M. Benavente, P.E. Interim General Manager Guam Power Authority P. O. Box 2977 Agana. GU 96932-2977

Subject: PROTEST of GPA Request for Quote RFQ 27445

Dear Wr. Benevente:

PDS now files this procurement protest under G.C.A. 5 § 5425(a) regarding the above referenced procurement. PDS has filed this protest in order to call to GPA's attention the following issues related to this Request for Quote (copy attached as Exhibit 1).

1. The services requested to be bid under this Request for Quote (10Mb Metro Ethernet WAN Connection for T&D Compound Dededo & Cabras Compound Dededo), were previously bid by GPA in IFB GPA-072-14 as Item A3 on the Bid Form and this procurement is currently under protest and procurement appeal. Thus, these services are subject to a Stay, reference 5 GCA §5425(g). This RFQ is a violation of the Stay provisions of the Guam Procurement law as noted and should not be allowed to proceed.

GPA is reminded that PDS has filed a timely protest of this procurement and no further action can be taken until this protest has been duly reviewed and an appropriate determination made (5 GCA §5425(g)).

Sincerely,

John Day President

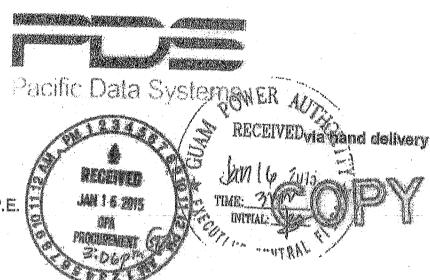
xc: Ms. Jalme L. C. Pangelinan - Supply Management Administrator Bill Mann, Attorney for Pacific Data Systems

Exhibit 1: GPA Request for Quote RFQ 27445



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January 16, 2015

Mr. John M. Benavente, P.E. Interim General Manager Guam Power Authority P. O. Box 2977 Agana, GU 96932-2977

Subject: PROTEST of GPA Request for Quote RFQ 27446

Dear Mr. Benavente:

PDS now files this procurement protest under G.C.A. 5 § 5425(a) regarding the above referenced procurement. PDS has filed this protest in order to call to GPA's attention the following issues related to this Request for Quote (copy attached as Exhibit 1).

1. The services requested to be bid under this Request for Quote (Telephone PRI Lines with 100 DID), were previously bid by GPA in IFB GPA-072-14 as Item A8 on the Bid Form and this procurement is currently under protest and procurement appeal. Thus, these services are subject to a Stay; reference 5 GCA §5425(g). This RFQ is a violation of the Stay provisions of the Guam Procurement law as noted and should not be allowed to proceed.

GPA is reminded that PDS has filed a timely protest of this procurement and no further action can be taken until this protest has been duly reviewed and an appropriate determination made (5 GCA §5425(g)).

Sincerely.

John Day President

xc: Ms. Jaime L. C. Pangelinan - Supply Management Administrator Bill Mann, Attorney for Pacific Data Systems

Exhibit 1: GPA Request for Quote RFQ 27446

185 Ilipog Drive, HBC Suite 204A, Tamuning, GU 96913 Main: (671) 300-0200 | Fax: (671) 300-0265 | www.pdeguam.com

EXHBIT "4"



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----Original Message----

From: Rudolpho C. Manibusan [mailto:rmanibusan@gpagwa.com]

Sent: Friday, January 16, 2015 9:29 AM

To: 'Pancho Madrid (pancho@pdsguam.com)'; 'jsm@pdsguam.com'; 'norma@pdsguam.com'

Cc: Vince F. Taitingfong; 'John Day'; Victor Torres 2; Ely Torres

Subject: Switch over of PRI Lines

Pancho,

Please provide scope of work and time frame to transfer PRI Line Services for PDS - GPA/GWA here at the Fadian Facility to the newly purchased GTA PRI Lines. I would also want to move all existing phone numbers currently in use by both Agencies (GPA and GWA PRI) as well.

v/r

Rudy Manibusan Computer Services Division Guam Power Authority 1911 Army Drive Barrigada, Guam 96913

Ph: 671-648-3062

BERMAN CONNOR & MANN Attorneys at Law

111 W Chalan Santo Papa Ste 503
Hagåtña, Guam 96910
Tele. 671-477-2778
Fax 671-477-4366
Website: www.pacific-lawyers.com

Website: www.pacific-lawyers.com Email: <u>brmann@pacific-lawyers.com</u>

January 16, 2015

VIA E-MAIL [gbotha@gpagwa.com]; AND, REGULAR MAIL

D. Graham Botha, Esq. Guam Power Authority P.O. Box 10287 Tamuning, Guam 96931

Re: OPA-PA-14-013 and Other PDS Pending Protests

Dear Graham:

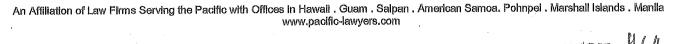
I will be entering my appearance on behalf of Pacific Data Systems, Inc. ("PDS") in OPA-PA-14-013 today. I understand there is a Pre-Hearing Conference set for January 23 at 10:00 a.m. in this appeal. This appeal is based on the PDS protest filed on November 17, 2014, and denied by GPA on November 21, 2014.

I take this opportunity to remind you that PDS filed a second protest regarding this procurement on November 24, 2014. GPA has not responded to this protest. I encourage it to do so.

In addition, PDS filed a third protest on December 22, 2014. This third protest is a matter of immediate concern because it relates to a RFQ issued by GPA on December 19, 2014. As that protest sets out, this procurement is subject to the automatic stay as a result of either or both of PDS's previous protests. GPA may not avoid the automatic stay by issuing this or any other RFQ.

H:\Christine\BRM\Ltrs\Graham Botha GPA 1162015.doc





D. Graham Botha, Esq. January 16, 2015 Page 2

PDS is legitimately concerned that GPA is ignoring the automatic stay. I brought this problem to the attention of John Benavente by letters dated December 1, 2014, and December 6, 2014.

In addition, I am attaching an e-mail that PDS received from Rudolpho Manibusan dated December 16, 2015, which requested PDS to provide the scope of work and time frame to transfer PRI Line Services at the Fadian facility to the newly purchased GTA PRI Lines. PDS assumes this new procurement by GPA must have been done in the form of a RFQ, although PDS was not requested to bid. PDS will respond to this request as it is required by law to do. This is not a waiver of PDS' position that any RFQ issued to GTA is void.

Finally, PDS today received three more RFQs from GPA requesting quotes for services that are covered under the procurement that is subject to the PDS protest, and therefore subject to the automatic stay. See RFQ 27444, 27445, and 27446, which are attached. This will force PDS to file yet three more protests.

It is a serious matter that GPA is continuing to ignore the fact that this procurement is subject to the automatic stay. Any action taken by GPA in violation of the automatic stay is void since there has been no written determination that the award of the contract without delay is necessary. See 5 GCA § 5425(g).

I believe GPA is obligated to rescind all of its pending RFQs and void any contracts issued pursuant to those RFQs. Please advise if GPA will do so voluntarily. Otherwise, PDS will have no option except to make a Motion to Enforce Automatic Stay.

Sincerely,

Bill R. Mann

Attachments: As stated.

----Original Message----

From: Rudolpho C. Manibusan [mailto:rmanibusan@gpagwa.com]

Sent: Friday, January 16, 2015 9:29 AM

To: 'Pancho Madrid (pancho@pdsguam.com)'; 'jsm@pdsguam.com'; 'norma@pdsguam.com'

Cc: Vince F. Taitingfong; 'John Day'; Victor Torres 2; Ely Torres

Subject: Switch over of PRI Lines

Pancho,

Please provide scope of work and time frame to transfer PRI Line Services for PDS - GPA/GWA here at the Fadian Facility to the newly purchased GTA PRI Lines. I would also want to move all existing phone numbers currently in use by both Agencies (GPA and GWA PRI) as well.

v/r

Rudy Manibusan Computer Services Division Guam Power Authority 1911 Army Drive Barrigada, Guam 96913

Ph: 671-648-3062



ATURIDÄT ILEKTRESEDÄT GUAHAN P.O.BOX 2977 - AGANA GUAM U.S.A. 96932-2977

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Christine Pangelinan

F p: Seic Bill R. Mann [brmann@pacific-lawyers.com]

Friday, January 16, 2015 4:30 PM

To: Subject: Graham Botha (gbotha@gpagwa.com)
OPA-PA-14-013 and Other PDS Pending Protests

Attachments: Ltr to Graham Botha 01162015 with attachments.pdf

Please see letter dated January 16, 2015, with attachments thereto.

Bill R. Mann
Berman O'Connor & Mann
111 W Chalan Santo Papa Ste 503
Hagatna, Guam 96910
Tel (671) 477-2778
Fax (671) 477-4366

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