



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor
**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

In the Appeal of
Pacific Data Systems, Inc.,

Appellant

Docket No. OPA-PA-14-007

DECISION

I. INTRODUCTION

This is the Decision of the Public Auditor for an appeal filed on June 25, 2014 by Pacific Data Systems, Inc. (PDS). The appeal is made from a decision on protest of method, solicitation or award by Guam Visitors Bureau (GVB) to G4S Security Systems (Guam) Inc. (G4S). PDS raises the following grounds on appeal:

1. The G4S technical bid failed to meet the Invitation For Bid (IFB) requirement for audio recording;

2. The 24X7 CCTV monitoring and operations service to be provided by G4S did not meet the requirement for these services to be performed at the Guam Police Department (GPD) Frankie Smith Tumon Police Precinct and with dedicated personnel to be provided by the bidder;

3. The G4S technical bid is based on the use of an unknown third party Internet Service Provider (ISP) to provide broadband connections to new and existing camera locations, but the G4S technical bid does not name the ISP to be used, the capabilities of the service, or the costs to install or operate the required services/connections;

1 4. The G4S bid failed to provide the required project plan as part of the bidder's technical bid
2 that detailed how G4S would provide the design, upgrade, construct, service, repair, assessment,
3 maintenance, monitoring, and signage to meet the requirements of the GVB IFB; and

4
5 5. The G4S technical bid project plan failed to provide a plan that could be performed within
6 the required 120 day delivery period specified in the IFB.

7 A hearing on the appeal was held on February 10, 2015 before Public Auditor Doris Flores
8 Brooks, CPA, CGFM and Hearing Officer Peter C. Perez, Esq. Bill R. Mann, Esq. appeared on
9 behalf of PDS along with PDS President John Day. Minakshi V. Hemlani, Esq. appeared on
10 behalf of GVB along with GVB General Manager Jon Nathan Denight. G4S did not appear.
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12 **II. FINDINGS OF FACT**

13 The Public Auditor issues this Decision based upon the procurement record, the documents
14 submitted by the parties, and the testimony, evidence, and arguments presented at the appeal
15 hearing, and makes the following findings of fact.
16

- 17 1. On January 31, 2014, GVB issued Multi-Step Bid No. GVB-2014-002MS (IFB) for
18 interested parties to submit bids for the assessment of existing closed circuit television
19 (CCTV) surveillance systems, design-build-upgrade new additional CCTV infrastructure,
20 maintenance services, 24/7 system monitoring, and secured access via internet for
21 authorized GVB officials. [Agency Procurement Record (APR), IFB, Tab E].
22
23 2. On February 14, 2014, two bidders, PDS and G4S submitted bids, which were opened on
24 February 17, 2014. [Agency Report (AR), Tab C].
25
26 3. On February 18, 2014, GVB evaluated and scored the technical bids submitted by G4S
27 and PDS. Under Phase I, G4S scored an average of 92.5 out of 100 total points and was

1 deemed acceptable to continue to Phase II. PDS scored an average of 69.5 out of 100 total
2 points, falling into the potentially acceptable range. PDS's bid was ultimately determined
3 acceptable to continue to Phase II. [OPA-PA-14-003 AR (14-003 AR), Tabs F and G]

4 4. On February 26, 2014, GVB determined that G4S's bid price submission was lower than
5 PDS. [14-003 AR, Tab F]

6 5. On February 27, 2014, GVB sent a notice of award to G4S and a notice of non-selection
7 to PDS. [APR, Tab B]

8 6. On March 24, 2014, PDS filed a Protest with GVB, which was subsequently denied on
9 April 1, 2014. [APR, Tab B]

10 7. On April 16, 2014, PDS filed an Appeal with OPA, which was then given Appeal number
11 OPA-PA-14-003. [OPA-PA-14-003 Notice of Appeal]

12 8. On May 1, 2014, GVB provided its Agency Report in response to OPA-PA-14-003, and
13 said Agency Report contained a copy of the G4S technical bid. [14-003 AR, Tab C]

14 9. On May 12, 2014, PDS filed a Protest of GVB's proposed award to G4S. [AR, Tab A]

15 10. On June 10, 2014, GVB rejected PDS's appeal as without merit and untimely. [AR, Tab
16 B]

17 11. On June 25, 2014, PDS filed the instant appeal. [OPA-PA-14-007 Notice of Appeal]

18 12. To date, no formal award has been issued by GVB in this procurement.

19 13. The IFB provided the following audio capabilities:

- 20 • "The Multi-Step Bid's specifications cover the required equipment, cabling, and other
21 work related to installing a high quality video *and audio recording and surveillance*
22 *system...*" [APR, Tab E, page 22, emphasis added]

- 1 • “The Multi-Step Bid’s specifications cover the required equipment, cabling, and other
2 work related to installing a high quality video *and audio recording surveillance system*
3 *designed to effectively monitor key locations within the Tumon area...*” [APR, Tab E,
4 page 47, emphasis added]
5

6 14. The IFB required the following CCTV monitoring and operational services:

- 7 • “The goal of this project is to provide an intelligent, real-time video assessment
8 system to protect against vandalism, pilferage, property damage, theft of property, and
9 to protect tourists from potentially harmful attacks. The system shall provide both
10 real-time situational awareness and archival records of security-related events. *The*
11 *Guam Police Department (GPD) Frankie Smith Precinct located in Tumon will be the*
12 *central monitoring control facility...*” [APR, Tab E, page 28, emphasis added]
13
- 14 • The IFB provided further, “...featuring *on-site* control and recording equipment *at the*
15 *Frankie Smith Precinct in Tumon...*” [APR, Tab E, page 29, emphasis added]
- 16 • The CCTV system is intended to provide intelligent video assessment of questionable
17 activities, *with monitoring of these activities at the Frankie Smith Precinct in Tumon.*
18 *On-site personnel* may view non-alarm related video as they wish... [APR, Tab E,
19 page 30, emphasis added]
20
- 21 • CCTV Surveillance System Monitoring 24/7: *This need requires an actual person to*
22 *be physically present at the central security system network console* to ensure that all
23 installed (existing and new) CCTV cameras are functioning properly, monitoring and
24 recording the land area it was designed to cover. [APR, Tab E, page 30, emphasis
25 added]
26

- 1 • The 24/7 CCTV Surveillance System Monitor's duties shall include but not be limited
2 to the operation of the CCTV Surveillance System cameras, communications links,
3 maintaining the operational status of all installed CCTV cameras... [APR, Tab E, page
4 30]
- 5 • The location of the on-site recording equipment and operator's controls shall be
6 located at the Frankie Smith Precinct in Tumon. [APR, Tab E, page 31]

7
8 15. The IFB provided the following additional requirements:

- 9 • The successful bidder shall design the layout, recommend the new additional system
10 equipment, cabling, and required ancillary accessories for the complete installation of
11 additional cameras at new sites (Appendix B), specifically the JFK/Kmart intersection
12 and the Oka Payless intersection to include monitoring the Sheraton, Santa Fe, and
13 Onward Resort areas. [APR, Tab E, page 29]
- 14 • Existing fiber cable should be used to connect the cameras whenever practical and
15 applicable. [APR, Tab E, page 29]
- 16 • The wireless cameras need to be reconfigured to a wired connection such as fiber or
17 other broadband connection, unless the bidder or offeror submits an alternative
18 solution... [APR, Tab E, page 29]

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21 16. The IFB required the following Project Plan requirements:

- 22 • The Contractor must be responsible for the complete design and construction of the
23 project. [APR, Tab E, page 26]
- 24 • The contractor shall be responsible for...a new proposed design system for the
25 completion of the work in every detail, and the handling over to GVB ready for
26 complete, safe, reliable and continuous operation. [APR, Tab E, page 26]

- 1 • The supply of new equipment, supply cables i.e. fiber optic, wireless equipment,
2 rough-in, cabling... [APR, Tab E, page 27]
- 3 • The replacement of existing and upgrading of devices that are identified as “defective”
4 or “faulty” or “obsolete/antiquated” including testing shall be to the complete
5 satisfaction of GVB. [APR, Tab E, page 27]
- 6 • In Phase I the bidder or offeror shall submit the “TECHNICAL BID” which provides
7 a written detailed project plan to meet the Scope of Work and Services per the Multi-
8 Step Bid’s specifications. The Technical Bid shall explain the results from the
9 assessment of the existing CCTV infrastructure and include recommended actions;
10 provide recommendations on the design and layout for the new additional equipment
11 to upgrade the current CCTV infrastructure; the bidder’s recommended action plan to
12 provide 24/7 monitoring services; to provide signage at each camera location; and to
13 provide the maintenance and support services to be provided in the form of a
14 maintenance agreement. [APR, Tab E, page 32]

17 17. The IFB required the Project Plan to provide a 120 day delivery period as follows:

- 18 • Within 120 Days from Notice to Proceed, once final negotiations have been completed
19 and Award accepted by successful offeror. [APR, Tab E, page 3]
- 20 • It is hereby understood and mutually agreed by and between the contractor and the
21 Guam Visitors Bureau that the time for delivery to final destination or the timely
22 performance of certain services *is an essential term of this contract.* [APR, Tab E,
23 page 11, emphasis added]
- 24 • **Delivery shall be 120 Calendar Days** upon receipt of the Award’s Notice to
25 Proceed... [APR, Tab E, page 25, bold in original]

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III. ANALYSIS

Pursuant to Title 5 of the Guam Code Annotated (G.C.A.) § 5703, the Public Auditor shall review GVB's June 10, 2014 decision denying PDS's May 12, 2014 protest *de novo*. The Public Auditor will now discuss her analysis of the issues and allegations raised in this appeal.

1. PDS's appeal was timely.

- GVB's Agency Statement stated that PDS's second protest was untimely and should be dismissed. GVB further alleged that the arguments set forth in PDS's second protest are merely detailed contentions of the same arguments alleged in PDS's first protest, which was appealed and addressed in OPA-PA-14-003. [AR, Tab C]
- The relevant deadline for filing protests is set forth in 5 G.C.A. § 5425(a):
Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto.
- PDS contends that it was able to review the G4S technical bid after it was filed as part of GVB's Agency Report in response to OPA-PA-14-003 on May 1, 2014. Therefore, PDS could not have known about G4S's technical details until then.
- On May 12, 2014, PDS's filed the Protest from which the appeal arises. The protest filing was within the 14 days prescribed by 5 G.C.A. § 5425(a) and is therefore timely.
- A protestor may file an appeal in accordance with 5 G.C.A. § 5425(e), which provides that a protestor may appeal a decision within fifteen (15) days of receipt of the decision.

1 • Upon timely receipt of such appeal, Title 2 Guam Administrative Rules and
2 Regulations (G.A.R.) § 12201(a) provides “[t]he Public Auditor shall determine
3 whether a decision on the protest of method of selection, solicitation or award of a
4 contract... within fifteen (15) days of receipt by protestor of the decision... is in
5 accordance with the statutes, regulations, and the terms and conditions of the
6 solicitation.”

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8 • On June 10, 2014, GVB rejected PDS’s Protest as without merit and as untimely. On
9 June 25, 2014, PDS filed the instant appeal. This was within the 15 day time limit
10 prescribed by 5 G.C.A. §5425(e). Therefore, PDS’s appeal is timely.

11 **2. Audio recording requirements were ambiguous, conflicting, or otherwise inadequate**
12 **in advising bidders of what the IFB required.**

13 • PDS alleged that the G4S technical bid failed to meet the IFB requirement for audio
14 recording. [Notice of Appeal, page 3]

15 • While pages 22 and 47 of the IFB specify the requirements of a high quality video and
16 audio recording surveillance system, there does not appear to be an audio requirement
17 in other sections of the IFB. For example, IFB Section VII.a: Cameras and Housing,
18 states, “...Cameras shall be able to deliver high-quality video...” [APR, Tab E, page
19 29]

20
21 • GVB Business Development Specialist, Antonio Muna, testified that in its IFB, GVB
22 did not request audio, but instead the digital video recorder (DVR) at GPD required
23 audio [APR, Tab E, page 42, section h].

24
25 • G4S’s bid response did not demonstrate audio capabilities. [G4S Bid Response, page
26 76]

- 1 • PDS's bid response provided integrated audio capabilities and two-way audio.
- 2 • The IFB specifications regarding audio recording requirements were ambiguous,
- 3 conflicting, or otherwise inadequate in advising bidders of what the IFB required.
- 4
- 5 Therefore, neither bidder's response was responsive.

6 **3. The monitoring and operations services requirements, as well as the location in**

7 **which the services were to be performed, were ambiguous, conflicting, or otherwise**

8 **inadequate in advising bidders of what the IFB required.**

- 9 • PDS alleged that the 24x7 CCTV monitoring and operations to be provided by G4S
- 10 did not meet the requirement for these services to be performed at the GPD Frankie
- 11 Smith Tumon Police Precinct, with dedicated personnel to be provided by the bidder.
- 12 [Notice of Appeal, page 4]
- 13 • The IFB stated that the GPD Frankie Smith Precinct located in Tumon will be the
- 14 central monitoring control facility. [APR, Tab E, page 28]
- 15 • The IFB also stated "... on-site control and recording equipment at the Frankie Smith
- 16 Precinct in Tumon..." [APR, Tab E, page 29], "...On-site personnel may view non-
- 17 alarm related video as they wish..." [APR, Tab E, page 30], and "... the on-site
- 18 recording equipment and operator's controls shall be located at the Frankie Smith
- 19 Precinct in Tumon." [APR, Tab E, page 31]
- 20 • Because the IFB was ambiguous, conflicting, or otherwise inadequate, the IFB also
- 21 provided for CCTV Surveillance System Monitoring 24/7, wherein "[t]his need
- 22 requires an actual person to be physically present at the central security system
- 23 network console to ensure that installed (existing and new) CCTV cameras are
- 24 functioning properly... [APR, Tab E, page 30]
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- 1 • G4S's bid response stated that monitoring services would be performed remotely.
2 [G4S Bid Response, page 47]
- 3 • GVB asserted that it received confirmation from G4S that G4S would have personnel
4 at GPD. Mr. Muna testified that G4S clarified that it would have personnel at GPD.
5 This confirmation appears to have been oral rather than written. GVB conceded that
6 G4S did not make written modifications to its bid, stating that monitoring services
7 would be performed at the Frankie Smith Precinct in Tumon.
8
- 9 • PDS's bid response provided that monitoring services would be performed at the
10 Frankie Smith Precinct in Tumon. [PDS Bid Response, PDS Exhibit 29]
- 11 • Mr. Muna testified that GVB had concerns about PDS's monitoring expertise and the
12 fact that PDS would be partnering with EOS, an Australian company, which could
13 result in response delays, should they arise, which he described as "human
14 infrastructure."
15
- 16 • Mr. Day testified that PDS does not presently have any contract requiring 24/7
17 monitoring.
18
- 19 • The IFB specifications regarding monitoring and operation services and the location
20 and manner of those services were ambiguous, conflicting, or otherwise inadequate in
21 advising bidders of what the IFB required. Therefore, neither bidder's response was
22 responsive.
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- 24 • Even if the IFB was clear that the monitoring and operation services were required to
25 be performed with dedicated personnel at the Frankie Smith Precinct in Tumon, G4S's
26 technical bid was non-responsive to those requirements.

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- Although G4S provided prices for the connection and installation of cameras [G4S Bid Response; 14-003 AR, Tab F], G4S's bid did not appear to include detailed connection costs calculations, connection services, cost for ISP services, or the identity of the entity that would be providing ISP services and the costs for such services.
 - Mr. Muna testified that G4S responded to GVB's maintenance, operation, and service requirements, and was not prohibited under the IFB from hiring an ISP. [AR, Tab C, pages 40-41; APR, Tab E, page 29; PDS Exhibit 13, Task III]. He also testified that GVB received no cost estimate for monthly recurring charges, and that GVB never discussed with G4S that G4S would be responsible for installation and ISP costs. GVB was unaware of how G4S arrived at its cost calculation. However, GVB received confirmation that G4S "accurately submitted with respect to price and specification." [AR, Tab C, Exhibit 1]
 - The IFB requirements were ambiguous, conflicting, or otherwise inadequate in numerous areas including but not limited to whether or not the bidder was required to be an ISP, whether or not a third party ISP would be compliant with the IFB, whether or not GVB considered monthly recurring costs in its bid evaluations, and whether or not GVB required a turnkey system. Therefore, neither bidder's response was responsive.

23 **5. Project plan specifications were ambiguous, conflicting, or otherwise inadequate in**

24 **advising bidders of what the IFB required.**

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- PDS alleged that the G4S bid failed to provide the required project plan as part of the bidder's technical bid that detailed how G4S would provide the design, upgrade,

1 construct, service, repair, assessment, maintenance, monitoring, and signage to meet
2 the requirements of the GVB IFB. [Notice of Appeal, page 7]

- 3
- 4 • The IFB provided that the contractor must be responsible for the complete design and
5 construction of the project. [APR, Tab E, page 26] In addition, page 32 of the IFB
6 requires the bidder or offeror to submit its technical bid which provides:

7 Written detailed project plan to meet the Scope of Work and Services... The
8 Technical Bid shall explain the results from the assessment of existing CCTV
9 infrastructure and include recommended actions; provide recommendations on the
10 design and layout for the new additional equipment to upgrade the current CCTV
11 infrastructure; the bidder's recommended action plan to provide 24/7 monitoring
services; to provide signage at each camera location; and to provide the
maintenance and support services to be provided in the form of a maintenance
agreement.

- 12 • G4S's response to these IFB requirements consisted of eight (8) pages, which appears
13 to suggest that an additional contract or contracts might be required for its 1.3.3 Cost
14 Proposal Approval, 1.4 Contract Award, and 1.4.1 Notice to Proceed items. [G4S Bid
15 Response, 14-003 AR Tab C]

- 16 • PDS's project plan was extensive and detailed, and consisted of thirty (30) pages. In
17 addition, PDS's project plan included locations, phases, and a timeline. [PDS Bid
18 Response, 14-003 AR Tab B]

- 19 • Mr. Muna testified regarding G4S's Project Plan including assessments and
20 refurbishments. He also testified that GVB was concerned that PDS intended to
21 replace everything, rather than to first provide GVB with an assessment, and that, due
22 to shipping delays, PDS might be unable to comply with GVB's manufacture and
23 delivery timelines.
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- The IFB specifications regarding the project plan were ambiguous, conflicting, or otherwise inadequate in advising bidders of what the IFB required. Therefore, neither bidder's response was responsive.

6. GVB's determination that G4S's bid was responsive to the 120 calendar day delivery period specified in the IFB was in error.

- PDS alleged that the G4S technical bid project plan failed to provide a plan that could be performed within the required 120 day delivery period specified in the IFB. [Notice of Appeal, page 10]
- The IFB required a delivery period of within 120 days from Notice to Proceed. [APR, Tab E, page 3] However, another section of the IFB required delivery of 120 calendar days upon receipt of the Award's Notice to Proceed. [APR, Tab E, page 25]
- Mr. Muna testified that the 120 calendar days delivery requirement is from the contract signing or from when a purchase order is issued.
- PDS's "Projected Project Gantt Chart" provides a delivery period of 16 weeks (equivalent to 4 months times 30 days per month) or 120 days. [PDS Bid Response, 14-003 Tab B]
- GVB noted that PDS agreed that its timeline was conditioned on "unknowns." Mr. Muna also testified that GVB had logistical concerns regarding PDS's inability to have overnight shipping to Guam. John Day clarified that based upon his experience sometimes delays could arise that are beyond PDS's control, that this was disclosed in PDS's offer, and that PDS's timeline included estimates for permits and authorizations.

- 1 • Based upon PDS's response, its bid was responsive to the IFB's 120 calendar day
2 delivery requirement.
- 3 • G4S's bid response included a one-page "Assessment Gantt Chart Schedule" and a
4 one-page table that indicated a schedule beginning March 3 to September 1. These
5 two pages appear to provide a delivery period of at least 180 days from the assessment
6 of existing equipment and the design-build-upgrade of new equipment to the receipt of
7 a Notice to Proceed. The 180 days was derived by multiplying six (6) months times
8 thirty (30) days per month. However, G4S's bid response did not address whether it
9 could meet the 120 calendar day delivery timeline upon receipt of a Notice to Proceed.
10 [G4S Bid Response, 14-003 AR, Tab C]
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- 12 • In GVB's Agency Statement, it indicated that the GVB evaluation committee accepted
13 G4S's 131 day project schedule, which was confirmed by Mr. Muna's testimony. [AR
14 Tab C, page 5] The 131 days was derived from the first line of G4S's Assessment
15 Gantt Chart Schedule. [G4S Bid Response, 14-003 AR, Tab C]
16
- 17 • Based upon G4S's bid response, its bid was non-responsive to the IFB's 120 calendar
18 day delivery requirement.
- 19 • Therefore, GVB's determination that G4S's bid was responsive as to the 120 calendar
20 day delivery requirement was in error.
21

22 **7. IFB instructions and information to prospective bidders were ambiguous,**
23 **conflicting, or otherwise inadequate.**

- 24 • 2 G.A.R. §§ 3109(a) and 3109(a)(2) requires that IFBs contain adequate instructions
25 and information to prospective bidders, and provides:
26

1 Competitive Sealed Bidding. (a) Application. The provisions of this Section
2 apply to every procurement made by competitive sealed bidding, including
multi-step bidding.

3 (2) Content. The Invitation for Bids shall include the following:

4 (A) instructions and information to bidders concerning the bid submission
5 requirements, including the time and date set for receipt of bids, the address of
6 the office to which bids are to be delivered, the maximum time for bid
acceptance by the territory, and any other special information;

7 (B) the purchase description, evaluation factors, delivery or performance
8 schedule, and such inspection and acceptance requirements as are not included
in the purchase description; and

(C) the contract terms and conditions, including warranty and bonding or
other security requirements, as applicable.

9 • In addition, when IFB specifications are ambiguous or otherwise inadequate, an IFB
10 and any bids or proposals may be cancelled. 2 G.A.R. §3115(d)(2)(A)(ii).

11 • As already stated throughout the Analysis section of this Decision, the IFB
12 specifications were ambiguous, conflicting, or otherwise inadequate in advising
13 bidders of what the IFB required. Accordingly, the IFB did not comply with 2 G.A.R.
14 §3109(a)(2)(B) and (C) and GVB could not have applied the IFB requirements and
15 criteria to make a determination of bidder responsibility or responsiveness, or to
16 ultimately make an award.

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18 **8. GVB could not have complied with the competitive sealed bidding evaluation**
19 **requirements prescribed by 5 G.C.A. § 5211.**

20 • The IFB, General Terms and Conditions, provision 16, sets forth the criteria for
21 determining the most fair, reasonable, responsive and responsible bidder, which
22 included: (a) total price of the items offered in the bid cost submitted responsively and
23 responsibly to the bid's instructions; (b) the ability, capacity, and the skill of the
24 bidder to perform; (c) whether the bidder can perform promptly or within the specified
25 time; (d) the quality of the last performance of the bidder with regard to awards

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27 previously made to it; (e) the previous and existing compliance by the bidder with

1 laws and regulations relative to procurement; (f) the sufficiency of financial resources
2 and ability of the bidder to perform; (g) the ability of the bidder to provide future
3 maintenance and services for the subject award; (h) the compliance with all the
4 conditions to the IFB. [APR, Tab E, page 8]

- 5 • The IFB, General Terms and Conditions, provision 22, stated, “[a]ward shall be made
6 to the lowest responsible and responsive bidder, whose bid is determined to be the
7 most advantageous to the Government, taking into consideration the evaluation factors
8 set forth in this solicitation.” [APR, Tab E, page 9].

- 9 • 5 G.C.A. §5211. Competitive Sealed Bidding provides:

10 (e) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted
11 without alteration or correction, except as authorized in this Chapter. Bids shall
12 be evaluated based on the requirements set forth in the Invitation for Bids,
13 which may include criteria to determine acceptability such as inspection,
14 testing, quality, workmanship, delivery and suitability for a particular purpose.
15 Those criteria that will affect the bid price and be considered in evaluation for
16 award shall be objectively measurable, such as discounts, transportation costs,
and total or life cycle costs. The Invitation for Bids shall set forth the
evaluation criteria to be used. No criteria may be used in bid evaluation that are
not set forth in the Invitation for Bids.

- 17 • The IFB was 57 pages long, extensive, technical, and detailed. [APR, Tab E]
- 18 • PDS’s bid, which was 317 pages long and G4S’s bid, which was 192 pages long, were
19 also extensive, technical, and detailed. [14-003 AR, Tabs B and C]
- 20 • GVB’s evaluation committee evaluated and scored the technical bids submitted by
21 G4S and PDS under Phase I on February 18, 2014, from 1:20 p.m. to 2:25 p.m., a
22 period of approximately one hour. [14-003 AR, Tab F]
- 23 • Given the volume of information that the evaluation committee was required to read
24 and evaluate, the Public Auditor finds it difficult to accept that the committee
25 accomplished this task in approximately one hour.
26

- 1 • The provisions of 5 G.C.A., Article 9, Part B, apply where it is determined upon
2 administrative review that a solicitation or award of a contract is in violation of law. 5
3 G.C.A. §5450. If prior to award it is determined that a solicitation or proposed award
4 of a contract is in violation of law, then the solicitation or proposed award shall be
5 cancelled. 5 G.C.A. §5451(a).
- 6 • Because the IFB specifications were ambiguous, conflicting, or otherwise inadequate
7 in advising bidders of what the IFB required, GVB could not have complied with the
8 competitive sealed bidding evaluation requirements prescribed by 5 G.C.A. §5211.
- 9 • Based upon the aforementioned, GVB could not have made a determination of
10 responsibility and responsiveness in proposing to award the procurement to G4S as the
11 lowest responsible bidder. 5 G.C.A. §5211(g) provides: “(g) Award. The contract shall
12 be awarded with reasonable promptness by written notice to the lowest responsible
13 bidder whose bid meets the requirements and criteria set forth in the Invitation for
14 Bids...”
- 15 • Therefore, GVB’s determinations were in error and in violation of law, and the
16 solicitation is cancelled.

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19 **IV. CONCLUSION**

- 20 1. PDS’s appeal is timely.
- 21 2. The ambiguous, conflicting, or otherwise inadequate IFB requirements resulted in neither
22 bidder’s submissions to be responsive.
- 23 3. The solicitation is cancelled.
- 24 4. As to the rulings requested by PDS in its Notice of Appeal, the Public Auditor rules as
25 follows:
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- 1 a. The Public Auditor reviewed *de novo* the proposed award made by GVB in this
2 procurement and has determined that neither G4S nor PDS's bid was responsive as
3 stated above.
4
5 b. A hearing on this appeal was held pursuant to PDS's request.
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7 c. The proposed award to G4S is cancelled. PDS's request that GVB be ordered to
8 award the procurement to PDS is DENIED.
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10 d. PDS's request for reimbursement of its costs is DENIED.
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12 5. The parties shall bear their respective costs and attorneys' fees.
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14 6. To the extent that this Decision is inconsistent with the prior Decision issued in OPA-PA-
15 14-003, issued on August 22, 2014, the prior Decision is overruled.

16 This is a Final Administrative Decision. The Parties are hereby informed of their right to
17 appeal from a Decision of the Public Auditor to the Superior Court of Guam in accordance with
18 Part D of Article 9 of 5 G.C.A. §5481(a) within fourteen (14) days after receipt of a Final
19 Administrative Decision. A copy of this Decision shall be provided to the Parties and their
20 respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review
21 on the OPA website at www.opaguam.org.

22 **DATED** this 20th day of March, 2015.

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DORIS FLORES BROOKS, CPA, CGFM
Public Auditor of Guam