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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO OPA-PA: 14-003

7 **OFFICE OF PUBLIC ACCOUNTABILITY**

8 In the Appeal of  
9 PACIFIC DATA SYSTEMS, INC.,  
10 Appellant.

Docket No. OPA-PA 14-003

**PRE-HEARING BRIEF OF PACIFIC  
DATA SYSTEMS, INC.**

11 The Appellant Pacific Data Systems, Inc. ("PDS") submits the following as its  
12 Pre-Hearing Brief.

13 It is the position of PDS that the issue on this appeal is whether the Guam  
14 Visitors Bureau ("GVB") complied with 2 GAR § 3109(m)(3). That regulation provides:

15 (3) **Confirmation of Bid.** When the Procurement  
16 Officer knows or has reason to conclude that a mistake has  
17 been made, such officer should request the bidder to confirm  
18 the bid. Situations in which confirmation should be  
19 requested include obvious, apparent errors on the face of the  
20 bid or a bid unreasonably lower than the other bids  
submitted. If the bidder alleges mistake, the bid may be  
corrected or withdrawn if the conditions set forth in  
Subsections 3109(m)(4) through 3109(m)(6) of this Section  
are met. (emphasis added).

21 It is PDS' position that the enormous disparity in the bid prices of G4S as  
22 compared to PDS triggered application of this requirement. The evidence at the hearing  
23 will demonstrate that the CCTV cameras bid by G4S were only \$837.50 apiece as  
24 opposed to the cameras bid by PDS at \$3,900.00 apiece. The evidence will further show  
25 that the bid by G4S to install new CCTV cameras at existing locations was only \$156.00  
26 per site versus the PDS bid of \$2,500.00 per site. The bid by G4S to connect and install  
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2 CCTV cameras at new locations was only \$156.00 per site versus the \$21,000.00 per site  
3 bid by PDS.

4 PDS submits a disparity in bid price such as \$156.00 versus \$21,000.00 raises the  
5 fundamental issue of whether the bidders have the same understanding of what they  
6 are bidding. There were only two bidders in this procurement, and GVB should have  
7 immediately recognized that one of the two bids was either a mistake or non-responsive  
8 to the specifications. The evidence at the hearing will demonstrate that GVB did  
9 nothing to require G4S to confirm its bid prices, or itself determining whether the low  
10 G4S bid prices resulted from a failure of G4S to bid what the specifications required.

11 In the appeal of *O&M Energy S.A.*, OPA-PA-08-004, the Public Auditor ruled that  
12 a large discrepancy in bid prices obligated the agency to conduct a substantial analysis  
13 of the bids, and its failure to do so resulted in an improper evaluation of the bids. The  
14 same principle should apply here. The difference in the cases is that here PDS  
15 submitted a fully compliant bid.

16 PDS believes the evidence at the hearing will demonstrate that had GVB  
17 analyzed the G4S bid, it would have learned that the low G4S bid prices resulted from a  
18 wholesale failure on the part of G4S to bid what the specifications required. Detail in  
19 this regard is provided in the PDS Comments on Agency Report, filed May 12, 2014 in  
20 this appeal. For example, the difference in price in the CCTV Cameras (\$837.50 versus  
21 \$3,900.00) is explained by the fact that the G4S bid used the old analog technology that  
22 did not provide for audio recording in direct violation of the specifications. The  
23 difference in the monitoring expense is explained by the fact that G4S bid has the  
24 monitoring done at its "National Control Center" as opposed to the Frankie Smith GPD  
25 Precinct in Tumon as required by the IFB. The discrepancy in the installation cost of the  
26 CCTV cameras at new locations (\$156.00 per site versus \$21,000.00 per site) is explained

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by the fact that the G4S bid was only for the design of the system and not for the actual installation of the cameras as required by the IFB.

As a remedy, PDS requests that the Public Auditor rule that GVB did have an obligation in the circumstances of this case to require G4S to confirm its bid both with respect to price and compliance with the specifications. Since GVB has declined to act, PDS requests that the Public Auditor exercise the authority granted her by 5 GCA § 5703 and conduct a *de novo* review of both the G4S and PDS bids in comparison to the specifications. If the *de novo* review shows that G4S did not meet the bid specifications, it is requested that the Public Auditor order GVB to reject the G4S bid, and order the award of the procurement to PDS as the only responsive bidder.

PDS notes that on May 12, 2014, it did file a protest with GVB on the grounds that the G4S bid did not meet the requirements and criteria in the Invitation for Bids as required by 5 GCA § 5211(g). As of the date of this Brief, GVB has not responded to the PDS protest. In any event, whatever action GVB takes on the PDS protest should not render the present appeal moot. If GVB accepts the PDS protest and makes the award to PDS, nevertheless this appeal should be used as a vehicle for the Public Auditor to rule that in circumstances such as this, an agency does have a duty to comply with 2 GAR § 3109(m)(3). Alternatively, if GVB rejects the PDS protest, PDS will in all probability file an appeal, in which event PDS would not object to this appeal being consolidated with its new appeal. PDS is concerned that GVB may delay in responding to the PDS protest, and 18 days have already elapsed. Since this IFB relates to public safety, PDS requests that GVB be ordered to respond to the PDS protest within 10 days.

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DATED this 30 day of May, 2014.

Respectfully submitted,

**BERMAN O'CONNOR & MANN**  
Attorneys for Appellant  
*PACIFIC DATA SYSTEMS, INC.*

By:   
**BILL R. MANN**

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