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OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS
 JUN 15 2012
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 FILE NO. OPA-PA- 12-011

Attorneys for the General Services Agency

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEAL**

IN THE APPEAL OF)	DOCKET NO. OPA-PA-12-011
)	
PACIFIC DATA SYSTEMS, INC.)	REBUTTAL TO
)	APPELLANT'S COMMENTS ON
Appellant.)	AGENCY REPORT
)	
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Pursuant to 2 GAR § 12194(c)(4) the General Service's Agency submits the following rebuttal to PDS' Comments on Agency Report filed on June 11, 2012.

Local Procurement Applicable

The Government of Guam is mandated to apply the policy in favor of local procurement. 5 GCA § 5008 states:

"All procurement of supplies and ad services **shall** be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:..." (Emphasis added)

5 GCA § 5008 does not give discretion to GSA to pick and choose to whom the policy of local procurement applies. In other words 5 GCA § 5008 applies to all vendors that meet the criteria. GTA meets the requirements 5 GCA § 5008.

ORIGINAL


CV0647-11 Currently before Judge Lamorena

On April 8, 2011 PDS filed CV0647-11 this case remains open at the Superior Court of Guam. Attached is a copy of the Complaint. GSA disputes PDS's assertion that these are separate matters and unrelated matters. The heart of both CV0647-11 and IFB GSA-064-11 is telecommunication services for the Government of Guam.

Respectfully submitted this 15th day of June 2012.

OFFICE OF THE ATTORNEY GENERAL
Leonardo M. Rapadas, Attorney General

By:


FRED NISHIHIRA
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Attorneys for Plaintiffs:
5 PACIFIC DATA SYSTEMS, INC. and
JOHN DAY
6

7 **IN THE SUPERIOR COURT OF GUAM**

8 PACIFIC DATA SYSTEMS, INC., and
9 JOHN DAY,

10 Plaintiffs,

11 vs.

12 GOVERNMENT OF GUAM, and
13 CLAUDIA ACFALLE, personally and
in her capacity as Chief Procurement
Officer for the Government of Guam,

14 Defendants.
15

CIVIL CASE NO. CV 0647-11

COMPLAINT

16 The Plaintiffs PACIFIC DATA SYSTEMS, INC. and JOHN DAY for their
17 Complaint state as follows:

18 1. The Plaintiff Pacific Data Systems, Inc. ("PDS") is a
19 telecommunications company which is authorized to do business on Guam, and pays
20 taxes on Guam.

21 2. The Plaintiff John Day is a resident of Guam, President of PDS,
22 and a taxpayer on Guam.

23 3. The Defendant Government of Guam is the political entity which
24 governs Guam.

25 4. The Defendant Claudia Acfalle is an employee of the Government
26 of Guam, and serves as the Chief Procurement Officer for the Government of Guam.
27 She is sued herein in both her personal and official capacity.

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5. This Court has jurisdiction in this matter pursuant to 7 G.C.A. § 3105.

FIRST CLAIM FOR RELIEF

6. The Guam Telecommunications Act of 2004 provided for the privatization of Guam Telephone Authority. The purposes of that Act include the creation of a regulatory environment conducive to competition, and to encourage the entry of new providers of telecommunications services in Guam.

7. PDS is a Competitive Local Exchange Carrier ("CLEC"). It received a Certificate of Authority by the Guam Public Utilities Commission (GPUC) to engage in telecommunication services on Guam on September 23, 2005.

8. After its receipt of its Certificate of Authority, PDS negotiated an Interconnection Agreement with GTA Telecom LLC ("GTA") and filed a tariff for services with the GPUC as required by Guam law. As of July 5, 2008, PDS was authorized to provide local exchange services to customers on Guam, became a competitor to GTA, and was ready and able to provide telecommunications services to the Government of Guam.

9. Guam's procurement law, 5 G.C.A. § 5001 et seq., mandates that the Government of Guam including all line agencies procure their telecommunication services through competitive bidding in accordance with Guam's procurement law.

10. Commencing in 2008, representatives of PDS had a series of meetings and communications with representatives of the General Services Administration, Government of Guam ("GSA"), including the Defendant Acfalle, to discuss the new deregulated local telecommunications environment, and to request that the Government procure its telecommunication services in accordance with Guam's procurement law.

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provision of telecommunication services to the line agencies of the Government since July 5, 2008, which amount shall be proven at trial;

(4) Award the Plaintiffs reasonable costs and attorneys' fees pursuant to 5 G.C.A. § 7112;

(5) Award pre-judgment interest as provided by law;

(6) Enter such other and further relief as the Court may deem just.

DATED this 8th day of April, 2011.

BERMAN O'CONNOR & MANN
Attorneys for Plaintiffs
PACIFIC DATA SYSTEMS, INC. and
JOHN DAY

By: *Bill R Mann*
BILL R. MANN