



June 11, 2012

VIA EMAIL

Mrs. Doris Flores-Brooks
Public Auditor
Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
JUN 13 2012
TRM 10:20 AM ST. [Signature]
FILE NO. OPA-PA- 12-011

Re: Procurement Appeal OPA-PA-12-011, PDS Comments on Agency Report

Dear Mrs. Flores-Brooks:

This letter represents comments on the GSA Agency Report and Procurement Record by Appellate, Pacific Data Systems, in the above referenced Procurement Appeal. PDS makes the following comments:

1. As noted by GSA in point (e) of the Agency Report, tab 11 of the Procurement Record documents the bid evaluation performed by GSA as evidenced by two memos written by Anita Cruz on April 17, 2012 and May 3, 2012 to the Acting Chief Procurement Officer. A review of these memos and the other documents contained in the Agency Report do not provide evidence of any evaluation undertaken by GSA to determine if the bidders participating in the Bid have qualified for Local Procurement Preference. If GSA has documentation supporting this evaluation and determination it should have provided this information with the Agency Report or Procurement Record and should be compelled to do so.
2. In point (g) of the GSA Agency Report, GSA acknowledges that GSA has developed a Local Procurement Preference Application form for the purpose of qualifying bidders for this preference in accordance with 5 GCA Section 5008. GSA has not provided a copy of this form with its Agency Report and should be instructed to do so as this is a material document to the issues before the OPA in this appeal.
3. In point (g) of the GSA Agency Report, GSA makes the assumption that all bidders in this procurement, GSA-064-11, qualify for the local procurement preference criteria thus applying any preference would be mute and have no effect on the outcome of the bid evaluation. PDS believes this is a false assumption for GSA to make and the reason that the Local Procurement Preference Application was developed by GSA to implement 5



GCA Section 5008. There is no evidence provided in the Agency Report or Procurement Record that any bidder, other than PDS, made an application for the Section 5008 Local Procurement Preference. If other bidders did make an application for this procurement preference then GSA should produce these documents.

5 GCA Section 5008 is specific in its definition of requirements and criteria that should apply to any bidder seeking this preference. Which of the required Section 5008 criteria a Bidder qualifies for is not information that is available to GSA or the general public. This must be one of the reasons why GSA developed the Local Procurement Preference Application form. The Application form requires a bidder to state which criteria the Bidder qualifies for and requires the Bidder to make an affirmative statement requesting the local procurement preference. GSA's position that a Bidder need not submit a Local Procurement Preference Application form at the time of bidding to qualify for this preference is a false assumption and contradictory to GSA's past practices in the implementation of this section of the Guam Procurement Act.

4. In point (g) of the GSA Agency Report, GSA makes the assumption that all bidders in this procurement, GSA-064-11, would qualify for and choose to receive the local procurement preference. In making its evaluation and award, GSA ignored the local procurement preference entirely. This evaluation was in contradiction to the General Terms and Conditions of this Procurement which stated that this procurement preference would be applicable to this bid.
5. In point (g) of the GSA Agency Report, GSA decided the Section 5008 Local Procurement Preference would be extended to all bidders, effectively eliminating the effect of the preference. It should be noted here again, that PDS has found no evidence of how GSA made this determination in the Agency Report or Procurement Record or how GSA qualified these bidders for eligibility. Once more this is a false assumption on GSA's part, as the attached Exhibit A shows, in a recent procurement at GDOE, Teleguam Holdings LLC (GTA) requested that the local procurement preference **NOT** (emphasis added) be applied to its bid submission. This exhibit provides evidence that GSA cannot make assumptions without specific facts and documentation from Bidders to backup qualification for and the local procurement preference. Once again it is clear that the Local Procurement Preference Application provides a critical function to establish bidder qualifications for the preference and a statement, affirmative or negative, of the Bidders desire to be considered for the preference.



6. In point (g) of the GSA Agency Report, GSA alleges that the Local Procurement Preference Application used by PDS is a DOE form, this is false. The Application submitted by PDS fully complies with the language of 5 GCA Section 5008 related to the requirements for a Bidder to take advantage of this local procurement preference.
7. In point (i) of the GSA Agency Report, GSA alleges that there may be some linkage between pending litigation that PDS and John Day are involved with and the subject appeal. PDS believes these are separate matters and there is no linkage whatsoever to the current appeal.

These comments provide further evidence of the deficiency by GSA in the award of Bid Form 10 to GTA in this procurement and the need for the OPA to issue a ruling requiring GSA to re-evaluate the award of Bid Form 10 by properly applying the applicable 5 GCA Section 5008 Local Procurement Preference.

Appellant, PDS, requests that the OPA conduct a hearing on this Procurement Appeal.

Sincerely,

A handwritten signature in black ink, appearing to be 'John Day', written in a cursive style.

John Day
President

Exhibit A: Copy of GTA Local Procurement Preference Application in GDOE IFB-020-2011



Exhibit A:
Copy of GTA Local Procurement Preference Application in GDOE IFB-020-2011



INVITATION FOR BID

ISSUING OFFICE
OFFICE OF SUPPLY MANAGEMENT
DEPARTMENT OF EDUCATION
P.O. BOX DE
HAGATNA, GUAM 96932
Tel: 300-1580/1581 Fax: 472-5001

MARCUS Y. PIDO
Supply Management Administrator

DATE ISSUED: Tuesday, February 16, 2011
BID INVITATION NO: GDOE IFB 020-2011
BID FOR: GDOE E-RATE NETWORK (GENET) 2011

SPECIFICATION: See Attached Specifications

DESTINATION: GUAM DEPARTMENT OF EDUCATION

REQUIRED DELIVERY DATE: SEE INDIVIDUAL SCOPES OF WORK FOR REQUIRED DELIVERY DATE

INSTRUCTION TO BIDDERS:

INDICATE WHETHER: INDIVIDUAL PARTNERSHIP CORPORATION

INCORPORATED IN: Delaware

This bid shall be submitted in duplicate and sealed to the Office of Supply Management, P.O. Box DE, Hagatna, Guam 96932 no later than **2:00 p.m., Thursday, March 17, 2011** and shall be publicly opened. Bid submitted after the time and date specified above shall be rejected. See attached General Terms and Conditions, and Sealed Bid Solicitation for details.

The undersigned offers and agrees to furnish within the time specified, the articles and services at the price stated opposite the respective items listed on the schedule provided, unless otherwise specified by the bidder. In consideration to the expense of the Government in opening, tabulating, and evaluating this and other bids, and other considerations, the undersigned agrees that this bid remain firm and irrevocable within **180** calendar days from the date opening to supply any or all the items which prices are quoted.

NAME AND ADDRESS OF BIDDER:

Teleguam Holdings, LLC
624 N Marine Corps Drive
Tamuning, Guam 96913

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS BID:

John J. Kim, Vice President, Controller

AWARD: CONTRACT NO.:	AMOUNT:	DATE:
ITEM NO(S) AWARDED:		
CONTRACTING OFFICER:		
MARCUS Y. PIDO Supply Management Administrator		
NAME AND ADDRESS OF CONTRACTOR:	SIGNATURE AND TITLE OF PERSON AUTHORIZED TO SIGN THIS CONTRACT:	

THIS DOCUMENT MUST BE COMPLETED AND RETURNED WITH THE FORMAL BID DOCUMENTS

DEPARTMENT OF EDUCATION
GOVERNMENT OF GUAM



**LOCAL PROCUREMENT PREFERENCE
APPLICATION**

Based on the law stipulated below, please place a check or mark an "x" on the (1-4) block indicating the section that applies to your business:

5GCA, Chapter 5, Section 5008 titled "Policy in Favor of Local Procurement" of the Guam Procurement Law and the Department of Education Procurement Regulations Section 1.7 States:

"All procurement of supplies and services shall be made from among business 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:

- 1. A licensed bona fide manufacturing business that adds at least twenty-five percent (25%) of the value of an item, not to include administrative overhead, using workers who are U.S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory of the Pacific Islands;
- 2. A business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured;
- 3. A business that has a bona fide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or one hundred fifty thousand dollars (\$150,000), whichever is less, of supplies and items of a similar nature to those being sought; or
- 4. A service business actually in business, doing a substantial portion of its business on Guam, and hiring at least ninety-five percent (95%) U.S. Citizens lawfully admitted permanent residents or nationals of the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

Procurement of supplies and services from off-Guam may be made if no local agent for such supplies or services may be found on Guam or if the total cost F.O.B. job-site, unloaded, of procurement from off-island is not greater than eighty-five percent (85%) of the total cost F.O.B. job-site, unloaded, of the same supplies or services when procured from a local source. Justification for off-island procurement must be submitted in writing to the Superintendent of Education or his designee.

1. I, _____, representative for _____, have read the requirements of the law cited above and do hereby qualify and elect to be given the Local Procurement Preference for Bid No. _____. By filing in this information and placing my signature below, I understand that Department of Education will review my application and shall determine whether or not the fifteen percent (15%) preference will be applied to the referenced bid.

2. I, JOHN J. KIM, representative for TELEGUAM HOLDINGS, LLC, have read the requirements of the law cited above and do not wish to apply for the Local Procurement Preference for Bid No. GDOE ERATE NETWORK IFB 020-2011.

Name: JOHN J. KIM
Address: 624 N MARINE CORPS DRIVE
TAMUNING, GUAM 96913

Title: VICE PRESIDENT, CONTROLLER
Telephone No: 671.644.1654
Fax No: 671.644.0106
E-Mail: jkim@gta.net