



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 14-003

DECISION

**INTRODUCTION**

On April 16, 2014, appellant, Pacific Data Systems, Inc. ("PDS") filed a Notice of Appeal. The appeal is made from a decision on protest of method, solicitation or award by the Guam Visitors Bureau ["GVB"] to G4S Security Systems ["G4S"]. PDS raises the following grounds on appeal: (a) GVB did not undertake a proper evaluation of the PDS and G4S bids as required by 5 Guam Code Annotated ["G.C.A."] § 5211(g) and 2 Guam Administrative Rules and Regulations ["G.A.R."] § 3109(m)(3); and, (b) GVB has violated 2 G.A.R. § 3131 and § 3132 for failing to provide PDS with copies of all of the G4S bid documents.

On May 12, 2014, PDS filed a Motion to Compel Production of the Complete Procurement Record. On May 19, 2014, GVB filed its opposition. On May 21, 2014, PDS filed its reply.

On May 13, 2014, GVB filed a Motion to Dismiss, asserting that PDS's appeal was not timely filed. On May 19, 2014, PDS filed its opposition. On May 21, 2014, GVB filed its reply.

1 On June 5, 2014, PDS filed a Waiver of Formal Hearing withdrawing its request for a  
2 hearing in this matter, waiving its right to a hearing, and submitting the case on the record as  
3 constituted.

4 On July 18, 2014, GVB filed its Report Pursuant to OPA's June 27, 2014 Order  
5 addressing what GVB has disclosed to PDS, what GVB has withheld from disclosure to PDS and  
6 basis for nondisclosure, whether all materials subject to disclosure have been provided by GVB to  
7 PDS, and confirming G4S's bid with respect to price and compliance. On July 25, 2014, PDS  
8 filed its response to GVB's Report, asserting all materials subject to disclosure have not been  
9 provided to PDS, asserting that GVB failed to comply with the Public Auditor's June 27, 2014  
10 Order regarding bid confirmation, and that GVB made misleading statements regarding the  
11 source of specifications.  
12

13 This Decision addresses the issues raised in this appeal and the pending motions filed by  
14 the parties.  
15

### 16 **FINDINGS OF FACT**

17 The Public Auditor issues this Decision based upon the procurement record and the  
18 documents, exhibits, and materials submitted by the parties, and makes the following Findings of  
19 Fact:  
20

- 21 1. On January 31, 2014, GVB issued Multi-Step Bid No. GVB-2014-002MS ("IFB") for  
22 interested parties to submit bids for the assessment of existing CCTV surveillance systems  
23 and design-build-upgrade new additional CCTV infrastructure in the Tumon area,  
24 including maintenance services and 24/7 system monitoring. [Agency Procurement  
25 Record ("APR") Tab E].  
26

- 1 2. The IFB, General Terms and Conditions, provision 16, sets forth the criteria for  
2 determining the most fair, reasonable, responsive, and responsible bidder, which included:  
3 (a) total price of the items offered in the bid cost submitted responsively and responsibly  
4 to the bid's instructions; (b) the ability, capacity, and skill of the bidder to perform; (c)  
5 whether the bidder can perform promptly or within the specified time; (d) the quality of  
6 the past performance of the bidder with regard to awards previously made to it; (e) the  
7 previous and existing compliance by the bidder with laws and regulations relative to  
8 procurement; (f) the sufficiency of financial resources and ability of the bidder to perform;  
9 (g) the ability of the bidder to provide future maintenance and services for the subject  
10 award; and (h) the compliance with all the conditions to the IFB. [APR, Tab E, page 8].  
11
- 12 3. The IFB, General Terms and Conditions, provision 22, stated in part, "[a]ward shall be  
13 made to the lowest responsible and responsive bidder, whose **bid is determined to be the**  
14 **most advantageous to the Government**, taking into consideration the evaluation factors  
15 set forth in this solicitation." [APR, Tab E, page 9].  
16
- 17 4. Two offerors, PDS and G4S submitted bids that were opened on February 17, 2014.  
18 [Agency Report ("AR"), Tabs B and C; APR, Tab A].  
19
- 20 5. GVB evaluated and scored the technical bids submitted by G4S and PDS in accordance  
21 with the criteria set forth in the IFB under A-2. Under Phase I, G4S scored 92.5 out of 100  
22 total points and was deemed acceptable to continue to Phase II. PDS scored 69.5 out of  
23 100 total points, falling into the potentially acceptable range. PDS's proposal was  
24 ultimately determined acceptable to continue to Phase II. [AR, Tabs F and G].  
25  
26  
27

- 1 6. Under Phase II, GVB evaluated and scored G4S and PDS's bids in accordance with the  
2 criteria set forth in the IFB under B-13. G4S was determined as the bidder whose  
3 submission met the bid specifications with the most competitive price. [AR, Tab F].
- 4 7. GVB evaluated and scored the technical bids submitted by G4S and PDS under Phase I  
5 and did not deem it necessary to question the scope of work for which G4S submitted its  
6 bid under Phase II.
- 7 8. G4S's bid price was \$573,440.
- 8 9. PDS's bid price was \$685,100.
- 9 10. On February 27, 2014, GVB sent a Notice of Award to G4S as the lowest responsive and  
10 responsible offeror. [Notice of Appeal, Exhibit A; GVB Motion to Dismiss, Exhibit A].
- 11 11. On that same day, a Notice of Non-Selection was sent to PDS, along with the Abstract for  
12 review. [GVB Motion to Dismiss, Exhibit A].
- 13 12. GVB properly evaluated both PDS and G4S's bids pursuant to 5 G.C.A. §5211.
- 14 13. On March 4, 2014, PDS made a written request to GVB under the Freedom of Information  
15 Act ("FOIA"). [GVB Motion to Dismiss, Exhibit B].
- 16 14. On March 5, 2014, PDS and GVB met and discussed PDS's concerns regarding the  
17 disparity of prices between PDS and G4S's bids and the items offered.
- 18 15. On March 6, 2014, GVB sent a letter to PDS memorializing that meeting. In it, GVB  
19 memorialized PDS's concerns regarding: (a) the differences in bid amounts between PDS  
20 and another bidder; (b) that the other bidder's bid amount would result in a loss to that  
21 company; and (c) the great disparity in the prices of items offered to the Bureau. GVB  
22 advised PDS that all bidders were assumed to have read the solicitation carefully and to  
23 respond according to its terms; that GVB seeks the lowest price from a responsible,  
24  
25  
26  
27

1 responsive bidder; and that GVB found all bidders to be responsive to GVB's needs. [AR,  
2 Tab H].

3 16. On March 10, 2014, GVB responded to PDS's FOIA request. [GVB Motion to Dismiss,  
4 Exhibit D].

5 17. By letter dated March 10, 2014, PDS requested copies of the bid package submitted by  
6 G4S for GVB-2014-002MS. [GVB Motion to Dismiss, Exhibit D].

7 18. By letter dated March 13, 2014, GVB advised PDS that the unpriced technical offer of a  
8 successful bidder may only be disclosed after an award. [GVB Motion to Dismiss, Exhibit  
9 F].

10 19. To date, no formal award has been issued by GVB in this procurement.

11 20. PDS concedes that no formal award has been issued by GVB in this procurement.

12 21. On March 24, 2014, PDS submitted a bid protest alleging that GVB did not undertake a  
13 proper evaluation of the PDS and G4S bids, and alleging that GVB did not provide PDS  
14 with copies of G4S's bid documents. [AR, Tab A].

15 22. On April 1, 2014, GVB rejected PDS's Protest as without merit and untimely. GVB  
16 advised PDS that "GVB did perform such an analysis and was satisfied with the process  
17 and outcome of its analysis. GVB acted within the scope of the law and its discretion..."  
18 GVB asserted that PDS was aware of the facts PDS offered in support of its protest no  
19 later than March 5, 2014 and that its March 24, 2014 was untimely under 5 G.C.A.  
20 §5425(a). [AR, Tab H].

21 23. PDS's protest was filed 19 days after its March 5, 2014 meeting with GVB. PDS knew or  
22 should have known that an issue existed whether or not GVB undertook a proper  
23 evaluation of PDS and G4S's bids based upon the differences in bid amounts and price  
24

1 item disparity when PDS and GVB met on March 5, 2014. On this issue, PDS's protest  
2 was untimely.

3 24. PDS's second protest issue, whether GVB complied with disclosure requirements was  
4 timely.

5 25. The following materials have been disclosed by GVB to PDS:

- 6 • The Bid Abstract;
- 7 • Notice of Non-Selection;
- 8 • Bid Cost Summary;
- 9 • All communications between GVB and G4S between January 1, 2012 and December  
10 6, 2013;
- 11 • All records of communications related to the procurement;
- 12 • All records of meetings related to the procurement;
- 13 • All materials contained in GVB's FOIA response to PDS;
- 14 • GVB communications with Duty Free Shoppers Security Manager Jeffrey Muth  
15 between January and March 2013; and
- 16 • G4S's Technical Bid.

17 26. The following materials were not disclosed by GVB to PDS:

- 18 • Initially, GVB discussions with Duty Free Shoppers Security Manager Jeffrey Muth  
19 were not disclosed, but have since been disclosed to refute PDS's allegation that the  
20 specifications for the IFB were created for GVB by G4S; and
- 21 • Materials designated by G4S as confidential and proprietary.

22 27. Brochures and other submittals were not utilized by GVB in developing the IFB  
23 specifications and therefore, were not disclosed to PDS.

1 28. GVB complied with disclosure requirements in accordance with law.

2 29. On June 27, 2014, the Public Auditor issued an Order requiring GVB to submit a Report  
3 regarding disclosures of materials to PDS and confirming G4S's bid with respect to price  
4 and compliance with the IFB specifications. The Order permitted PDS to file a response.

5 30. In response to the Order, GVB submitted its Report on July 18, 2014. The Report  
6 provided that by letter dated July 8, 2014, GVB General Manager Karl Pangelinan  
7 requested that G4S reconfirm G4S's bid with respect to price and IFB specifications and  
8 confirm whether the bid submitted by G4S was accurately submitted with respect to price  
9 and specifications. [GVB Report, July 18, 2014, Exhibit B].

10 31. The Report also provided that on July 9, 2014, G4S General Manager Chris Garde  
11 provided GVB with written confirmation that the bid submitted by G4S was accurately  
12 submitted with respect to price and specification. [Id.]

13 32. On July 25, 2014, PDS submitted its Response to GVB's Report. The Response asserts  
14 that all materials subject to disclosure have not been provided to PDS, GVB failed to  
15 comply with the Order regarding confirmation of G4S's bid, and GVB made misleading  
16 statements regarding the source of the IFB specifications.

### 17 CONCLUSIONS OF LAW

18 PDS's first issue on appeal, whether or not GVB undertook proper evaluation of the PDS  
19 and G4S bids as required by 5 G.C.A. § 5211(g) and 2 G.A.R. § 3109(m)(3), is DENIED. GVB  
20 properly evaluated PDS and G4S's bids in accordance with 5 G.C.A. §5211(g) and 2 G.A.R.  
21 §3109(m)(3). 5 G.C.A. §5211(g) provides, "The contract shall be awarded with reasonable  
22 promptness by written notice to the lowest responsible bidder whose bid meets the requirements  
23 and criteria set forth in the Invitation for Bids..." 2 G.A.R. §3109(m)(3) provides: "When the

1 Procurement Officer knows or has reason to conclude that a mistake has been made, such officer  
2 should request the bidder to confirm the bid. Situations in which confirmation should be  
3 requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than  
4 the other bids submitted..." Applying the Findings of Fact made above to the law stated, GVB  
5 properly evaluated PDS and G4S's bids.

6  
7 PDS's second issue on appeal, whether GVB violated 2 G.A.R. § 3131 and § 3132 for  
8 allegedly failing to provide PDS with copies of all G4S bid documents, and PDS's Motion to  
9 Compel Production of the Complete Procurement Record, are each DENIED. GVB complied  
10 with 2 G.A.R. §3131 and §3132. 2 G.A.R. §3131. Public Record. Provides, "The record required  
11 by Section 3129 (Record of other Procurement Actions) of this Chapter is a public record and,  
12 subject existing laws and regulations, any person or persons may inspect and copy any portion of  
13 the record."

14  
15 2 G.A.R §3129 provides:

16 Record of all (other) Procurement Actions. The procurement record shall include the  
17 following:

- 18 1. The date, time, subject matter and names of participants at any meeting including  
government employees that are in any way related to a particular procurement;
- 19 2. A log of all communications between the government employees and any member of the  
20 public, potential bidder, vendor or manufacturer which is in any way related to the  
procurement;
- 21 3. Sound recordings of all pre-bid conferences; negotiations arising from a request for  
proposals and discussions with vendors concerning small purchase procurement;
- 22 4. Brochures and submittals of potential vendors, manufacturers or contractors, and all  
drafts, signed and dated by the draftsman, and other papers or materials used in the  
23 development of specifications; and
- 24 5. The requesting department's determination of need.

25 2 G.A.R. §3132 provides:

26 Rules for Procurement Records. As required by 5 G.C.A. §5252, these rules are declared by  
27 the Policy Office to:



- 1
- 2 1. Protect the integrity of the bidding process;
- 3 2. Protect the confidentiality of trade secrets;
- 4 3. Establish reasonable charges for copying papers;
- 5 4. Provide for and establish reasonable charges for transcription of sound recordings;
- 6 5. Require public access to the record at the earliest possible time; and
- 7 6. Not require that the record be complete or that the procurement award be made before
- 8 inspection and copying are permitted.

9 Applying the Findings of Fact to the law stated, GVB complied with 2 G.A.R. §§ 3131 and  
10 3132. GVB provided materials subject to disclosure to PDS including the Notice of Non-  
11 Selection; the Bid Abstract; the Bid Cost Summary; all communications between GVB and G4S  
12 between January 1, 2012 and December 6, 2013; all materials contained in GVB's FOIA response  
13 to PDS; G4S's Technical Bid; and GVB communications with Duty Free Shoppers Security  
14 Manager Jeffrey Muth between January and March 2013.

15 GVB's Motion to Dismiss is GRANTED IN PART and DENIED IN PART. GVB's rejection  
16 of PDS's protest as untimely was correct with regard to the issue of whether or not GVB properly  
17 evaluated PDS and G4S's bids. 5 G.C.A. §5425(a) allows a bidder who may be aggrieved in  
18 connection with the method of source selection, solicitation or award of a contract, to protest to  
19 the Chief Procurement Officer or the head of a purchasing agency, but must submit the protest  
20 within fourteen (14) days after such aggrieved person knows or should know of the facts giving  
21 rise to. In the instant matter, PDS met with GVB on March 5, 2014 to discuss concerns including  
22 whether or not GVB properly evaluated PDS and G4S's bids in light of the differences in bid  
23 amounts and disparity in price items. PDS raised this as its first protest issue nineteen (19) days  
24 later, on March 24, 2014, when it filed its formal protest. This was beyond the fourteen (14) day  
25 time limit prescribed by Section 5425(a). Consequently, this protest issue was untimely. The

1 second protest issue, whether or not GVB violated 2 G.A.R. §§ 3131 and 3132, as discussed  
2 above, was timely, but is DENIED.

3  
4 **DECISION**

- 5 1. PDS's Motion to Compel is DENIED.  
6 2. GVB's Motion to Dismiss is GRANTED IN PART and DENIED IN PART.  
7 3. PDS's appeal is DENIED on all grounds raised.  
8 4. PDS's request for reimbursement of its costs is DENIED.  
9 5. GVB's request for an award of attorneys' fees and costs is DENIED.

10 This is a Final Administrative Decision. The Parties are hereby informed of their right to  
11 appeal from a Decision of the Public Auditor to the Superior Court of Guam in accordance with  
12 Part D of Article 9 of 5 G.C.A. §5481(a) within fourteen (14) days after receipt of a Final  
13 Administrative Decision. A copy of this Decision shall be provided to the Parties and their  
14 respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review  
15 on the OPA website at [www.guamopa.org](http://www.guamopa.org).  
16

17  
18 **DATED** this 22<sup>nd</sup> day of August, 2014.

19  
20 

21  
22 **DORIS FLORES BROOKS, CPA, CGFM**  
23 **Public Auditor of Guam**