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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
DATE: 5/21/14  
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FILE NO OPA-PA: 14-003

**OFFICE OF PUBLIC ACCOUNTABILITY**

In the Appeal of  
  
PACIFIC DATA SYSTEMS, INC.,  
  
Appellant.

Docket No. OPA-PA 14-003  
  
**REPLY OF PACIFIC DATA SYSTEMS,  
INC. TO THE OPPOSITION TO  
MOTION TO COMPEL PRODUCTION  
OF THE COMPLETE PROCUREMENT  
RECORD**

Appellant Pacific Data Systems, Inc. ("PDS") replies as follows to the Opposition of Guam Visitors Bureau ("GVB") to the Motion to Compel Production of the Complete Procurement Record.

**ARGUMENT**

GVB takes the unusual and meritless position that the procurement record need contain only documents and records generated after the issuance of an IFB. However, there is nothing in the statute, 5 GCA § 5249, or the verbatim regulation, 2 GAR § 3129, which suggest such a limitation. This is easily demonstrated by reference to 2 GAR § 3129(4), which refers to "... 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 development of specifications ..." This quite obviously refers to documents and records generated prior to the issuance of an IFB.

Likewise, § 3129(1) refers to records of meetings including government employees "... that are in any way related to a particular procurement." Not only is this regulation unlimited as to time, transparency in the procurement process requires the disclosure of this information. The same is true regarding § 3129(2) referring to a

**ORIGINAL**

1  
2 log of communication between government employees and members of the public,  
3 potential bidders, and vendors or manufacturers.

4 In filing this Motion, PDS sought to do no more than ensure the procurement  
5 record was complete before proceeding. However, GVB's response raises a legitimate  
6 concern as to exactly why GVB is reluctant to provide a complete procurement record.

7 Attached as Exhibit 1 to the Declaration of Bill R. Mann is a letter from GVB  
8 counsel to undersigned counsel dated May 20, 2014. This is in response to a PDS  
9 Freedom of Information Act Request. The documents produced include  
10 correspondence between G4S and Jon Nathan Denight, the Deputy General Manager of  
11 GVB, in reference to a detailed assessment prepared by G4S of the existing CCTV  
12 system. GVB had originally refused to provide the requested documents based on what  
13 PDS believed to be a specious objection. See Exhibit 2 to Mann Declaration. It was only  
14 after PDS threatened litigation that GVB complied. See Exhibit 3 to Mann Declaration.

15 In any event, these documents should have been made part of the procurement  
16 record by GVB. The G4S assessment is clearly the submittal of a potential vendor under  
17 § 3129(4). In addition, it is a paper used by GVB in the development of specifications  
18 likewise required by § 3129(4). The following is a summary that clearly shows that the  
19 language used for various GVB IFB specifications actually originated from the G4S  
20 assessment.

21 **GVB IFB Specifications**

**Source of IFB Specification wording**

22 Page 34 Section A-3.2

G4S: I). List & Operability of existing CCTV equip

23 Page 34 Section A-3.3

G4S: I). Fiber Optics Equipment ... at the Precinct

Page 34 Section A-3.4

G4S: I). Pan/Tilt/Zoom Cameras

24 Page 34 Section A-3.5

G4S: I). Fixed Cameras

Page 35 Section A-3.8

G4S: V.) Recommendation for Multilingual Signage

25 Page 35 Section A-3.9

G4S: VI.) Maintenance Plans

Page 37 Section A-3.11

G4S: Attachment #1

26 Page 38 Section A-3.12

G4S: Attachment #2

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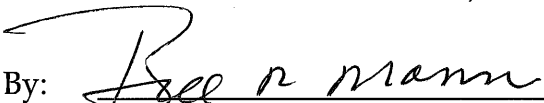
There can thus be no doubt that many of the GVB IFB specifications were created for GVB by G4S. It should not have been necessary for PDS to obtain these documents by a FOIA Request when it was the clear obligation of GVB to include them in the procurement record.

This unfortunately raises questions about what other documents GVB may have failed to provide as part of the procurement record. For some reason, GVB has been reluctant to disclose contacts and communications with G4S prior to the issuance of the IFB. As stated in paragraph 3 of its Opposition, Jon Nathan Denight recalled his discussions with Jeffrey Muth because Mr. Muth was responsible for the original installation of the CCTV cameras by DFS. Although Mr. Denight had a good memory in that regard, he neglected to mention his communications with G4S or the extensive assessment that G4S provided to GVB which GVB utilized in preparing the specifications.

In light of the above, it is respectfully submitted that the Public Auditor should make very clear to GVB that it must immediately produce the complete procurement record as defined by 2 GAR § 3129. PDS requests that the Public Auditor issue an Order to that effect.

DATED this 21<sup>ST</sup> day of May, 2014.

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

By:   
**BILL R. MANN**