

**CABOT
MANTANONA LLP**
Edge Building, Second Floor
929 South Marine Corps Drive
Tamuning, Guam 96913
Telephone: (671) 646-2001
Facsimile: (671) 646-0777

OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

SEP 13 2011

FILE NO. 10-005 BY: Max

Attorney for Appellee, Guam Community College

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

In the Matter of Appeal of)	Docket Number: OPA-PA-10-005
PACIFIC DATA SYSTEMS, INC,)	
)	RESPONSE TO APPELLANT'S
Appellant)	MOTION FOR ENTRY OF AWARD
)	AGAINST GUAM COMMUNITY
)	COLLEGE
)	
_____)	

Appellee Guam Community College, (hereinafter "GCC"), by and through its attorney, Catrina M. Campana, of Cabot Mantanona LLP, respectfully submits this Response to Appellant's Motion for Entry of Award Against Guam Community College.

GCC acknowledges that in the Decision of January 12, 2011, the Public Auditor awarded PDS its "...reasonable costs incurred in connection with the solicitation in its August 3, 2010 protest, including PDS' reasonable bid preparation costs, excluding PDS' attorney's fees..." See Decision of January 12, 2011 at ¶ 7 on p. 20.

5 G.C.A. § 5425(h) entitles a protestant to the reasonable costs incurred in connection with the solicitation and protest, including bid preparation costs and excluding attorney's fees when a protest is sustained.

According to PDS' September 8, 2011 Motion, the reasonable bid preparation costs and costs incurred in connection with the solicitation and protest for IFB GCC-FB-015 total \$21,299.17. This amount is mirrored by the Schedule of Costs prepared by

PDS which was submitted to GCC President Mary Okada on May 27, 2011. See attached Schedule of Costs is marked and attached hereto as Exhibit "A".

Upon receipt of the schedule of costs, GCC requested clarification regarding several issues regarding the calculation of the bid preparation and protest costs detailed in the Schedule of Costs. On July 6, 2011, GCC's counsel wrote to PDS President John Day and requested the revision of the Schedule of Costs in order to bring it in conformance with 5 G.C.A. § 5425(h). See attached Letter to John Day dated July 6, 2011 marked and attached as Exhibit "B".

The changes requested by GCC include the revision of the invoice to reflect an hourly rate for non professional work and errands to reflect the current minimum wage of \$7.25/hour. GCC's letter requested that the several hours detailed and billed as routine errands such as the copying and delivery of documents be revised to reflect the current minimum wage of \$7.25/hour.

Further, GCC requested clarification regarding the 152 hours that the PDS invoice attributed to "Prepare PDS Bid response". These hours are billed in addition to the dozens of hours also listed under the task "bid prep". This accounting reflected almost four weeks of professional work devoted exclusively to the preparation of the bid. It is GCC's position that the hundreds of hours billed in Invoice 112023 for bid prep are not a reflection of the reasonable amount of time devoted to the routine preparation of a bid package.

As stated above, GCC acknowledges that PDS is entitled to reasonable bid preparation costs as per the Order dated January 12, 2011 and 5 G.C.A. § 5425(h), which entitles a protestant to the reasonable costs incurred in connection with the

solicitation and protest, including bid preparation costs. However, GCC does not believe that PDS's submission that the total bid preparation costs for IFB GCC-FB-015 exceed \$21,000.00 is a reasonable reflection of the actual costs incurred in connection with the solicitation and protest of this bid and requests that the figures be revised downward.

GCC believes that this matter could be most expeditiously resolved via a formal hearing in order to provide the parties an opportunity to present evidence which would bring the invoice in conformity with 5 G.C.A. § 5425(h). GCC hereby requests that a hearing on the issues listed above.

Respectfully submitted this 13th day of September, 2011.

CABOT MANTANONA LLP
Attorney for Guam Community College

By:



CATRINA M. CAMPANA

IFB GCC-FB-015 Voice over Internet Protocol Procurement Schedule of PDS Costs

Task	Who	Details	PDS Bid Preparation Costs		
			rate	unit	qty
Pickup Bid	JC	Pickup, copy, scan distribute Bid	\$13.92	FTE hrly cost	3
Copies	Admin	Printing and copying costs	0.10	per page	250
Analysis	JD	Read, discuss, analyze bid requirements	\$89.42	FTE hrly cost	6
Analysis	CV	Read, discuss, analyze bid requirements	\$57.69	FTE hrly cost	4
Analysis	PM	Read, discuss, analyze bid requirements	\$36.92	FTE hrly cost	4
Meeting offsite	JD	Participate in Prebid meeting	\$89.42	FTE hrly cost	2
Meeting offsite	CV	Participate in Prebid meeting	\$57.69	FTE hrly cost	2
Meeting offsite	CV	Participate in Site Survey (2) at campus	\$57.69	FTE hrly cost	2
Analysis	CV	Writeup Site Survey	\$57.69	FTE hrly cost	4
Prep work	JD	Review Site Survey create Questions	\$89.42	FTE hrly cost	2
Prep work	CV	Review Site Survey create Questions	\$89.42	FTE hrly cost	2
Prep work	JT	Review Site Survey create Questions	\$57.69	FTE hrly cost	2
Prep work	PM	Review Site Survey create Questions	\$28.85	FTE hrly cost	2
Admin work	JC	Receive Amendments, ack, scan/copy	\$13.92	FTE hrly cost	2
Copies/Fax	Admin	Receive Amendments, ack, scan/copy	0.10	per page	100
Prep work	JD	Read, discuss, analyze bid amendments	\$89.42	FTE hrly cost	4
Prep work	CV	Read, discuss, analyze bid amendments	\$57.69	FTE hrly cost	2
Prep work	JT	Read, discuss, analyze bid amendments	\$28.85	FTE hrly cost	2
Prep work	PM	Read, discuss, analyze bid amendments	\$36.92	FTE hrly cost	2
Bid Prep	JD	Prepare PDS Bid Response	\$89.42	FTE hrly cost	30
Bid Prep	CV	Prepare PDS Bid Response	\$57.69	FTE hrly cost	30
Bid Prep	JT	Prepare PDS Bid Response	\$28.85	FTE hrly cost	16
Bid Prep	PM	Prepare PDS Bid Response	\$36.92	FTE hrly cost	16
Bid Prep	JC	Prepare PDS Bid Response	\$13.92	FTE hrly cost	20
Bid Prep	JC	Prepare PDS Bid Response	\$20.88	FTE hrly OT cost	10
Bid Prep	NJA	Prepare PDS Bid Response	\$19.20	FTE hrly cost	20
Bid Prep	NJA	Prepare PDS Bid Response	\$28.80	FTE hrly OT cost	10
Meeting	JD,RJM,CV	Review Bid Submission with Senior Mgmt	\$236.54	FTE hrly cost	2
Copies	admin	Printing and copying costs	0.10	per page	1500
Binders	Admin	Cost of Bid packaging for 1 orig/5 copies	25	per package	6
Bid Bond	Admin	Cashier Check Processing fee	8	bank fee	1
Bid Prep	MG	Cashier Check processing	\$19.20	admin time	1
Milage	Admin	Mileage expense	\$0.52	per mile	108

Total Bid Preparation Costs \$10,276.78

IFB GCC-FB-015 Voice over Internet Protocol Procurement Schedule of PDS Costs

Task	Who	Details	PDS GCC Protest Costs		
			rate	unit	total
Review and Research Prep work	JD	Review GCC non award	\$89.42	FTE hrly cost	\$357.69
Deliver & Pickup FoIR	JD	Prepare FoIR for bids	\$89.42	FTE hrly cost	\$178.85
Copies	JC	Deliver, Pickup, copy, scan distribute FoIR	\$13.92	FTE hrly cost	\$41.76
Analysis	Admin	Printing and copying costs	0.10	per page	\$10.00
Meeting offsite	JD	Read and analyze FoIR documents	\$89.42	FTE hrly cost	\$894.23
Research	JD	Meet with legal counsel to discuss	\$89.42	FTE hrly cost	\$178.85
Prep work	JD	Do research on basis for protest	\$89.42	FTE hrly cost	\$357.69
Meeting	JD	Prepare Bid Protest	\$89.42	FTE hrly cost	\$894.23
Meeting offsite	JD,RJM,CV	Review Bid Protest with Senior Mgmt	\$236.54	FTE hrly cost	\$473.08
Prep work	JD	Review Bid Protest with legal counsel	\$89.42	FTE hrly cost	\$178.85
Delivery and Admin	JD	Finalize Bid Protest and file with GCC	\$89.42	FTE hrly cost	\$178.85
Milage	JT	File Protest with GCC, scan, copy	\$13.92	FTE hrly cost	\$27.84
	Admin	Mileage expense	\$0.52	per mile	\$16.72
Total Bid Protest Costs					\$3,790.63

Task	Who	Details	PDS Appeal of GCC Protest Costs		
			rate	unit	total
Review and Research Prep work	JD	Review GCC protest rejection	\$89.42	FTE hrly cost	\$178.85
Meet with Atty re Appeal	JD	Review GTA Bid documents	\$89.42	FTE hrly cost	\$178.85
Review and Preparation	JD	Discuss basis for OPA Appeal	\$89.42	FTE hrly cost	\$178.85
Meeting	JD	Draft OPA appeal	\$69.42	FTE hrly cost	\$357.69
Meet with Atty re Appeal	JD,RJM,CV	Review Appeal with Senior Mgmt	\$236.54	FTE hrly cost	\$473.08
Review	JD	Approve filing of Notice of Appeal	\$89.42	FTE hrly cost	\$178.85
Review and Analysis	JD	Review Procurement Record	\$89.42	FTE hrly cost	\$178.85
Meet with Atty	JD	Agency Report	\$89.42	FTE hrly cost	\$357.69
Prepare & Attend	JD	Pre-Hearing Conference Review	\$89.42	FTE hrly cost	\$178.85
Research and prep	JD	11/05/10 Pre-Hearing Conference	\$89.42	FTE hrly cost	\$178.85
Review	JD	Motion to Compel GCC re Complete Agency Report	\$89.42	FTE hrly cost	\$536.54
Review	JD	Order Afer Hearing	\$89.42	FTE hrly cost	\$89.42
Review	JD	Notice of Hearing re Appellant's Motion to Compel and Continue Pre-Hearing Conf	\$89.42	FTE hrly cost	\$89.42
Review	JD	TeleGuam Holdings LLC's Comments on Procurement Appeal and Agency Report	\$89.42	FTE hrly cost	\$178.85

IFB GCC-FB-015 Voice over Internet Protocol Procurement Schedule of PDS Costs

Task	Who	Details	PDS Appeal of GCC Protest Costs		
			rate	unit	total
Research and prep	JD	Appellant PDS Comments on Agency Report	\$89.42	FTE hrly cost	\$357.69
Review	JD	First Supplemental Procurement Record	\$89.42	FTE hrly cost	\$357.69
Review	JD	Real Party In Interest TeleGuam Holdings LLC's Opposition to Motion to Compel GCC to Provide Agency Report	\$89.42	FTE hrly cost	\$178.85
Review, Analysis, Preparation	JD	Response to Appellant's Motion to Compel GCC to Provide Complete Agency Report	\$89.42	FTE hrly cost	\$357.69
Review	JD	Rebuttal to Appellant's Comments on the Agency Report	\$89.42	FTE hrly cost	\$178.85
Discuss with Counsel	JD	Hearing Request	\$89.42	FTE hrly cost	\$178.85
Review/Discuss w/Counsel	JD	Decision and Order RE Appellant's Motion to Compel GCC to Provide Complete Agency Report	\$89.42	FTE hrly cost	\$357.69
Research, prep, discuss w/Atty	JD	Supplemental Brief	\$89.42	FTE hrly cost	\$357.69
Review/Discuss w/Counsel	JD	Declaration of John Brady	\$89.42	FTE hrly cost	\$178.85
Review/Discuss w/Counsel	JD	Real Party In Interest TeleGuam Holdings LLC's Response to Appellant's Supplemental Brief	\$89.42	FTE hrly cost	\$178.85
Review/Discuss w/Counsel	JD	Motion to Correct Decision	\$89.42	FTE hrly cost	\$178.85
Review	JD	Second Supplemental Procurement Record	\$89.42	FTE hrly cost	\$178.85
Review	JD	Third Supplemental Procurement Record	\$89.42	FTE hrly cost	\$178.85
Review/Discuss w/Counsel	JD	OPA Decision on PDS Appeal	\$89.42	FTE hrly cost	\$178.85
Meeting	JD,RJM,CV	Review OPA Decision on PDS Appeal	\$236.54	FTE hrly cost	\$473.08
Mileage	Admin	Mileage expense for offsite meetings	\$0.52	per mile	\$26.00

Total OPA Appeal Costs \$7,231.77

Total PDS Bid, Protest, and Protest Appeal Costs \$21,299.17

CABOT
MANTANONA LLP

Attorneys at Law

Cesar C. Cabot, Esq.
Rawlen M.T. Mantanona, Esq.
David P. Ledger, Esq.
Helkel S. Hemminger, Esq.
Sarah A. Strock, Esq.
David J. Guerrieri, Jr., Esq.
Catrina M. Campana, Esq.

July 6, 2011

VIA FACSIMILE: 300-0265

John Day
Pacific Data Systems
185 Ilipog Drive, HBC Suite 204A
Tamuning, Guam 96913

Re: **PDS Bid Preparation Costs**

Dear Mr. Day:

Please be advised that I am writing in response to PDS' claim for reasonable costs for reimbursement for reasonable costs incurred in connection with the solicitation and protest of GCC Bid No. GCC-10-0015.

According to the invoice number 112023 and cost schedule prepared by PDS, the bid, protest, and protest appeal costs total \$21,299.17.

5 G.C.A. § 5425(h) entitles a protestant to the reasonable costs incurred in connection with the solicitation and protest, including bid preparation costs and excluding attorney's fees when a protest is sustained.

As per 5 G.C.A. § 5425(h), GCC first requests the revision of the invoice to reflect an hourly rate for non professional work and errands to reflect the current minimum wage of \$7.25/hour.

GCC submits that the nine hours billed as "pickup bid", "Deliver & Pickup FoIR" "admin time" and "Delivery and Admin" should be revised to reflect the current minimum wage. These tasks are detailed as routine errands such as the delivery and copying of documents which we believe cannot reasonably be billed at a rate above the minimum wage.

Further, GCC requests clarification regarding the 152 hours that the PDS invoice attributes to "Prepare PDS Bid response". These hours are billed in addition to the dozens of hours also listed under the task "bid prep". This accounting reflects almost four weeks of professional work devoted exclusively to the preparation of this bid.

It is GCC's position that the hundreds of hours billed in Invoice 112023 for bid prep are not a reflection of the reasonable amount of time devoted to the routine preparation of a bid package. This being the case, GCC requests that PDS revise the invoice to reflect the reasonable hours devoted to bid preparation.

GCC requests that PDS Invoice Number 112023 be revised to reflect these changes listed above in order to bring the invoice in conformity with 5 G.C.A. § 5425(h). Please do not hesitate to contact me at my office if you have any questions or concerns regarding the above noted response.

Si Yu'os Ma'ase,

A handwritten signature in black ink, appearing to read "Catrina M. Campana", with a long horizontal flourish extending to the right.

CATRINA M. CAMPANA