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2 Suite 503, Bank of Guam Bldg.
3 111 Chalan Santo Papa
4 Hagåtña, Guam 96910
5 Telephone No.: (671) 477-2778
6 Facsimile No.: (671) 477-4366

7 Attorneys for Appellant:
8 PACIFIC DATA SYSTEMS, INC.

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 1/22/15

TIME: 11:15 AM PM BY: AG

FILE NO OPA-PA: 14-013

9 OFFICE OF PUBLIC ACCOUNTABILITY

Docket No. OPA-PA 14-013

10 In the Appeal of
11 PACIFIC DATA SYSTEMS, INC.,
12 Appellant.

MOTION TO ENFORCE AUTOMATIC
STAY

13 The Appellant Pacific Data Systems, Inc. ("PDS") moves the Public Auditor to
14 enforce the automatic stay in this procurement, and as grounds therefore states as
15 follows:

16 I. ARGUMENT

17 On November 17, 2014, PDS protested IFB GPA-072-14. Guam Power Authority
18 ("GPA") denied the PDS protest by letter dated November 21, 2014. PDS then timely
19 appealed GPA's denial of its protest on December 9, 2014.

20 PDS then filed a second protest with GPA on November 24, 2014, on different
21 grounds. GPA has taken no action on this protest despite the passage of almost two
22 months.

23 GPA has basically ignored the automatic stay mandated by 5 GCA § 5425(g). On
24 December 19, 2014, GPA issued a Request for Quotation ("RFQ"). Since services
25 requested to be bid under this RFQ are included within the services covered by this
26 procurement, PDS promptly filed another protest on December 22, 2014. That protest is

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attached as Exhibit "1" to this Brief. GPA has not responded to this protest despite the passage of time.

GPA has recently continued to ignore the automatic stay by the issuance of three additional RFQs on January 14 and 15, 2015, for services covered under the subject procurement. GPA's action forced PDS to file yet three more protests with GPA, which are attached as Exhibits "2", "3" and "4" to this Brief.

Finally, in an e-mail dated January 16, 2015, PDS was requested by GPA to provide an estimate of the scope of work and time frame to transfer PRI Line Services from PDS, which currently provides this service, to GTA. See Exhibit "5". This apparently results from an RFQ for which PDS was not requested to bid and has no knowledge. PDS is legally obligated to respond to this request, but the request itself is improper since the service GPA has requested to be transferred from PDS to GTA is within the procurement and therefore subject to the automatic stay.

It appears GPA is under the misimpression that it may evade the automatic stay by the expedient of issuing RFQs. However, there is no exception for RFQs to the automatic stay. In fact, if an agency could avoid the automatic stay by simply dividing up the procurement and issuing RFQs, the automatic stay would be entirely nullified.

PDS has called this problem to the attention of D. Graham Botha, attorney for GPA, by letter dated January 16, 2015, which is attached as Exhibit "6". Undersigned counsel has not received any response to this letter.

The Public Auditor has authority to enforce the automatic stay. See Order Granting Motion Re: Automatic Stay dated September 20, 2013, in *In the Appeal of JMI Edison*, OPA-PA-13-010. PDS requests that the Public Auditor immediately order GPA not to proceed further with the solicitation or with the award of any contract pending final resolution of this appeal and all pending protests of PDS. In addition, PDS

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requests that any contracts entered into by GPA and any third party as a result of the RFQs be declared void and of no effect. See 5 GCA § 5425(g).

DATED this 22^d day of January, 2015.

Respectfully submitted,

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

By: 
BILL R. MANN

PDS

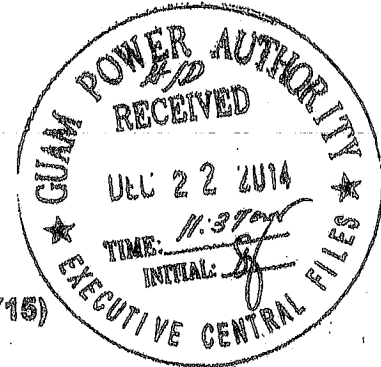
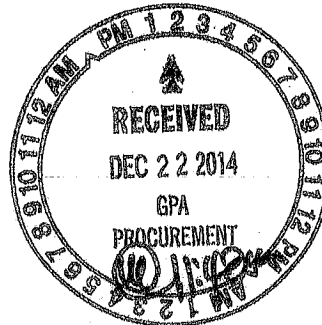
Pacific Data Systems

COPY

December 22, 2014

via hand delivery

Mr. John M. Benavente, P.E.
Interim General Manager
Guam Power Authority
P. O. Box 2977
Agana, GU 96932-2977



Subject: PROTEST of GPA Request for Quote RFQ 27443(FY15)

Dear Mr. Benavente:

PDS now files this procurement protest under G.C.A. 5 § 5425(a) regarding the above referenced procurement. PDS has filed this protest in order to call to GPA's attention the following issues related to this Request for Quote (copy attached as Exhibit 1).

1. The services requested to be bid under this Request for Quote (30Mb MetroEthernet services between GPA Macheche Substation and GPA Fadian Office), were previously bid by GPA in IFB GPA-072-14 and this procurement is currently under protest and procurement appeal. Thus, these services are subject to a Stay, reference 5 GCA §5425(g). This RFQ is a violation of the Stay provisions of the Guam Procurement law as noted and should not be allowed to proceed.

GPA is reminded that PDS has filed a timely protest of this procurement and no further action can be taken until this protest has been duly reviewed and an appropriate determination made (5 GCA §5425(g)).

Sincerely,

John Day
President

xc: Ms. Jaime L. C. Pangelinan - Supply Management Administrator

Exhibit 1: GPA Request for Quote RFQ 27443(FY15)

185 Hipeog Drive, HBC Suite 204A, Tamuning, GU 96913
Main: (671) 300-0200 | Fax: (671) 300-0265 | www.pdsguam.com

EXHIBIT 1



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Stephanie Imasa/Dawn

Tel: (671) 648-3054/3055 Fax: (671) 648-3165
E-Mail Address: smtaljeron@gpagwa.com

| | | | | |
|---|---------------------|--|-----------------|---------------------------------------|
| Accountability | Impartiality | Competence | Openness | Value |
| Please respond as soon as possible, but no later than: 12:00 P.M., December 22, 2014 | | Request for Quotation (RFQ) No.: 27443(FY15) | | Date: December 19, 2014 |
| VENDOR: PACIFIC DATA SYSTEMS 300 - 0200 (F) 300 - 0715 (F) | | Please furnish price quotation, delivery time and term based on CIF. Destination GPA for the items listed below. Please respond by the above date. | | |
| Quoted by: (Please Print) | | Quote Date: | Telephone: | |
| Delivery/Completion Date Required: <u>1 Week after Notice to Proceed (NTP)</u> Delivery Date Offered: Terms: NET (30) THIRTY DAYS Prices Good For: _____ days | | Offering recyclable and/or biodegradable products. () YES () NO Please separate your offer of recyclable and/or biodegradable products from regular products | | |

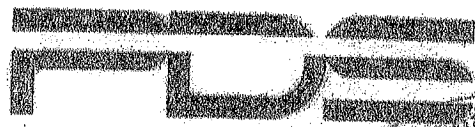
NOTICE: Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property, 5GCA Section 5253, enacted by P.L. 28-24 and amended by P.L. 28-98:

If a contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while or government of Guam Property, with the exception of public highway. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may and temporarily any contract for services until corrective action has been taken.

THIS IS NOT AN ORDER

| NO. | QTY. | DESCRIPTION | Unit Price | Extended Price |
|-----|------|---|------------|----------------|
| | LOT | To provide the Guam Power Authority with 30Mbps Metro Ethernet WAN Connection between the following location: - Macheche Substation to Fadian Facility (Server Room) SCOPE OF WORK: * Service Level Agreement (SLA): Provider must provide SLA that will address guaranteed response times, escalation procedures and the terms for any refunds/credits; The terms of this Service Level Objectives shall minimally address: - Network Availability of 99.99% - Packet delivery rate of 99.99% - Network latency of 10ms round trip - Mean Time to Repair (MTTR) 2 hours * Provider shall describe guaranteed level of bandwidth for the proposed data services * Provider shall provide a description of how the SLA is monitored, with statistic, charts and how these statistics are calculated * Provider must provide monthly bandwidth usage statistics and reports in .pdf format via email by COB 3rd work day of the following month NOTE: All requests for Delivery Extensions will be Closely Scrutinized as all items/services are crucial to new Customer installations, maintenance, and on-going projects. THANK YOU FOR YOUR RESPONSE Note: If you are unable to provide a price quote please annotate "NO QUOTE" and return this Fax to: Dawn Fejeram | | |

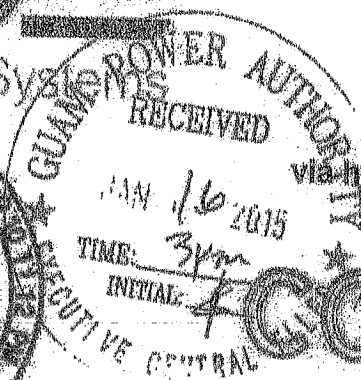
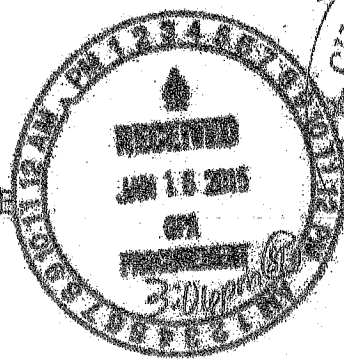
Exhibit 2



Pacific Data Systems

January 16, 2015

Mr. John M. Benavente, P.E.
Interim General Manager
Guam Power Authority
P. O. Box 2977
Agana, GU 96932-2977



COPY

Subject: PROTEST of GPA Request for Quote RFQ 27444

Dear Mr. Benavente:

PDS now files this procurement protest under G.C.A. 5 § 5425(a) regarding the above referenced procurement. PDS has filed this protest in order to call to GPA's attention the following issues related to this Request for Quote (copy attached as Exhibit 1).

1. The services requested to be bid under this Request for Quote (5Mb Metro Ethernet WAN Connection for the following locations to the Fadian Server Room: (1) Hagatna Customer Service Satellite (2) Tenjo Diesel Power Plant (3) Agana Substation (4) Talofofo Substation (5) Apra Height Substation (6) Umatac Substation (7) Yigo Substation), were previously bid by GPA in IFB GPA-072-14 as Item A4 on the Bid Form and this procurement is currently under protest and procurement appeal. Thus, these services are subject to a Stay, reference 5 GCA §5425(g). This RFQ is a violation of the Stay provisions of the Guam Procurement law as noted and should not be allowed to proceed.

GPA is reminded that PDS has filed a timely protest of this procurement and no further action can be taken until this protest has been duly reviewed and an appropriate determination made (5 GCA §5425(g)).

Sincerely,

John Day
President

xc: Ms. Jaime L. C. Pangelinan - Supply Management Administrator
Bill Mann, Attorney for Pacific Data Systems

Exhibit 1: GPA Request for Quote RFQ 274442



GUAM POWER AUTHORITY

Part 1

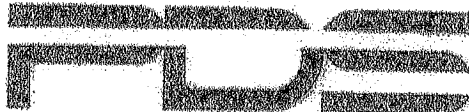
ATUFIDAT ILEKTRESIDAT GUAHAN
P.O. BOX 3077 - AGANA, GUAM, U.S.A. 96932-2877

Stephanie M. Tallaron, email: amtallaron@gpawva.com, Tel: (671) 548-3054/3055, Fax: (671) 648-3184

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|---|---------------------|--|--|--------------|
| Accountability | Impartiality | Competence | Openness | Value |
| Please respond as soon as possible, but no later than: January 16, 2015 | | Request for Quotation (RFQ) No.: 27444 | Today's Date: January 14, 2015 | |
| VENDOR: <i>Murphy Systems 3300 - 0200 3300 - 0265</i> | | Please furnish price quotation, delivery time and term based on CIP. Destination GHA for the items listed below. Please respond by the above date. | | |
| Quoted by: (signature) | | Quote Date: | Telephone: | |
| Delivery Date Required: 1 Week ARO After Notice to Proceed | | Offering recyclable and/or biodegradable products. () YES () NO | | |
| Delivery Date Offered: _____ | | Please separate your offer of recyclable and/or biodegradable products from regular products. | | |
| Terms: NET 30 THIRTY DAYS | | | | |
| Prices Good For: _____ days | | | | |
| <p>NOTICE: Restriction against Sex Offenders Employed by Service Provider to Government of Guam from Working on Government of Guam Property. GGC Section 3263, enacted by NL 28-24 and amended by (L) 28-03.</p> <p>If a contract for services is awarded to the bidder or contractor, then the service provider must warrant that no person or its employee who has been convicted of a sex offense under the provisions of Chapter 26 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 26 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, is or will be employed on the sex offender registry, and provide services on behalf of the service provider to the Government of Guam Property, with the exception of the highway. If any employee of a service provider providing services to government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four hours of the conviction and will immediately remove such convicted person from work on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will purchase its services provided to that contractor. The service provider shall take corrective action within twenty-four hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the Government, then the Government will, upon declaration may suspend temporarily any contract for services until corrective action has been taken.</p> | | | | |

THIS IS NOT AN ORDER

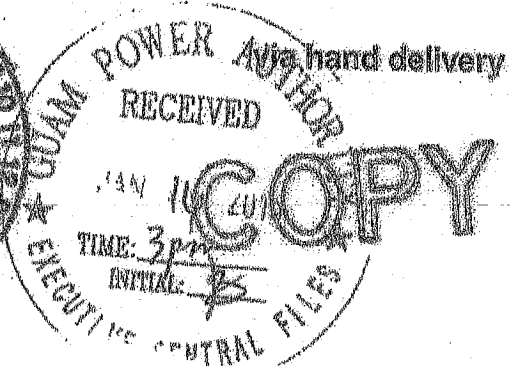
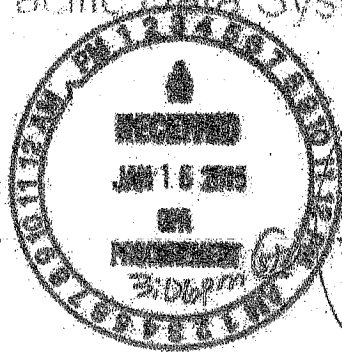
| ITEM | QTY | DESCRIPTION | Unit Price | Extended Price |
|------|-----|---|------------|----------------|
| 1. | Lot | <p>To provide the Guam Power Authority with Single Line Ethernet WAN connections for the following locations to each service room:</p> <ul style="list-style-type: none"> Hagåtña (Mainland GPAGWA) Customer Service Satellite Office Tarigo Diesel Power Plant Agaña Substation Tafeloa Substation Agaña Heights Substation Umatac Substation Yigo Substation <p>Service Level Agreement (SLA)</p> <ul style="list-style-type: none"> Provider must provide SLA that will address guaranteed response time, escalation procedure, and the terms for any service credits, the terms of the Service Level Agreement shall include, but not be limited to: <ul style="list-style-type: none"> Network Availability of 99.99% Latency to Server Room of 80ms Network Capacity of 100Mbps Agaña, Tarigo & Umatac (METS) 2 Hours Provider shall warrant a guaranteed level of bandwidth for the proposed data services. Provider shall provide a description of how the SLA is monitored with specific plans and how these activities are assessed. Provider must provide monthly description usage statistics and reports in pdf format via email by 09:00 workday of the following month. <p>NOTE TO VENDOR:</p> <ol style="list-style-type: none"> All requests for delivery Estimations will be closely scrutinized and all items services are critical to new customer installations, maintenance, and on-going projects. Please indicate "AS ORDERED" when offer and/or delivery is "AS ORDERED". If you see items to provide a price quote please indicate "AS QUOTE" and return this back to Stephanie Tallaron. | | |



Pacific Data Systems

January 16, 2015

Mr. John M. Benavente, P.E.
Interim General Manager
Guam Power Authority
P. O. Box 2977
Agana, GU 96932-2977



hand delivery
COPY

Subject: PROTEST of GPA Request for Quote RFQ 27445

Dear Mr. Benavente:

PDS now files this procurement protest under G.C.A. 5 § 5425(a) regarding the above referenced procurement. PDS has filed this protest in order to call to GPA's attention the following issues related to this Request for Quote (copy attached as Exhibit 1).

1. The services requested to be bid under this Request for Quote (10Mb Metro Ethernet WAN Connection for T&D Compound Dededo & Cabras Compound Dededo), were previously bid by GPA in IFB GPA-072-14 as Item A3 on the Bid Form and this procurement is currently under protest and procurement appeal. Thus, these services are subject to a Stay, reference 5 GCA §5425(g). This RFQ is a violation of the Stay provisions of the Guam Procurement law as noted and should not be allowed to proceed.

GPA is reminded that PDS has filed a timely protest of this procurement and no further action can be taken until this protest has been duly reviewed and an appropriate determination made (5 GCA §5425(g)).

Sincerely,

John Day
President

xc: Ms. Jaime L. C. Pangelinan - Supply Management Administrator
Bill Mann, Attorney for Pacific Data Systems

Exhibit 1: GPA Request for Quote RFQ 27445



GUAM POWER AUTHORITY *EXHIBIT 1*

ATURIDAT ILEKTRESE DAT GUAMAN
 P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Stephanie M. Telfer on email: smtelferon@gpawps.com Tel: (671) 646-3054/3055 Fax: (671) 648-3198

Accountability *Impartiality* *Competence* *Openness* *Value*

Please respond as soon as possible, but no later than: **January 19, 2015**
 Request for Quotation (RFQ) No.: **27445**
 Today's Date: **January 15, 2015**

VENDOR: **AMERIC DATA SYSTEMS
 3) 800-02602
 1) 300-02605**
 Please furnish price quotation, delivery time and terms based on CIF. Destination: GPA for the items listed below. Please respond by the above date.

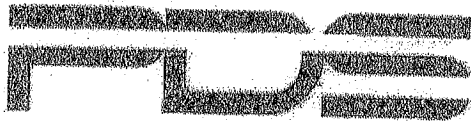
Quoted by: (signature) _____
 Quote Date: _____ Telephone: _____

Delivery Date Required: **1 Week ARO After Notice to Proceed**
 Delivery Date Offered: _____
 Terms: **NET (30) THIRTY DAYS**
 Prices Good For: _____ days
 Offering recyclable and/or biodegradable products: YES NO
 Please separate your offer of recyclable and/or biodegradable products from regular products.

NOTICE: Regulation against Sex Offenders Employed by Service Providers to Government of Guam from Making or Government of Guam Property, GSCA Section 6253, enacted by P.L. 20-24 and amended by P.L. 20-08
 If a contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 20 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 20 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as a homicide defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the provider while on government of Guam Property, with the exception of public highway. If any employee of a service provider providing services on government property and is convicted subsequent to award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.

THIS IS NOT AN ORDER

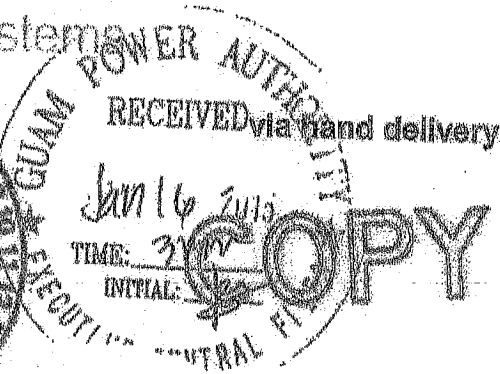
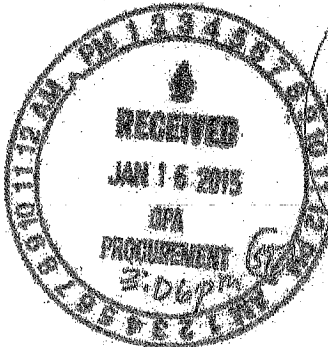
| ITEM | QTY | DESCRIPTION | Unit Price | Extended Price |
|------|-----|---|------------|----------------|
| 1. | Lot | <p>To provide the Guam Power Authority with 10 Mbps wired Ethernet WAN Connection for the following locations to Radio Tower Room:</p> <ul style="list-style-type: none"> - T&C Compound Decade - Chibres Compound Decade <p>Service Level Agreement (SLA):</p> <ul style="list-style-type: none"> - Provider must provide a SLA that will address guaranteed maximum time resolution procedure and the terms for any refunds/credits. The terms of the service level agreement shall minimally contain: <ul style="list-style-type: none"> - Network Availability of 99.99% - Packet delivery rate of 99.99% - Network latency of time round trip - Mean Time to Repair (MTTR) 2 hours - Provider shall describe guaranteed level of bandwidth for proposed data services. - Provider shall provide a description of how the SLA is monitored with performance charts and how these statistics are calculated. - Provider must provide monthly bandwidth usage statistics and reports in pdf format via email by COB 3rd work day of the following month. <p>NOTE TO VENDOR:</p> <ol style="list-style-type: none"> 1.) All requests for delivery Extensions will be closely scrutinized as all items/services are critical to new customer installations, maintenance, and on-going projects. 2.) Please indicate "AS SPECIFIED" when offer and/or delivery is "AS SPECIFIED" 3.) If you are unable to provide a price quote please annotate "NO QUOTE" and return this Fax to Stephanie Telfer on. | | |



Pacific Data Systems

January 16, 2015

Mr. John M. Benavente, P.E.
Interim General Manager
Guam Power Authority
P. O. Box 2977
Agana, GU 96932-2977



Subject: PROTEST of GPA Request for Quote RFQ 27446

Dear Mr. Benavente:

PDS now files this procurement protest under G.C.A. 5 § 5425(a) regarding the above referenced procurement. PDS has filed this protest in order to call to GPA's attention the following issues related to this Request for Quote (copy attached as Exhibit 1):

1. The services requested to be bid under this Request for Quote (Telephone PRI Lines with 100 DID), were previously bid by GPA in IFB GPA-072-14 as Item A8 on the Bid Form and this procurement is currently under protest and procurement appeal. Thus, these services are subject to a Stay, reference 5 GCA §5425(g). This RFQ is a violation of the Stay provisions of the Guam Procurement law as noted and should not be allowed to proceed.

GPA is reminded that PDS has filed a timely protest of this procurement and no further action can be taken until this protest has been duly reviewed and an appropriate determination made (5 GCA §5425(g)).

Sincerely,

John Day
President

xc: Ms. Jaime L. C. Pangelinan - Supply Management Administrator
Bill Mann, Attorney for Pacific Data Systems

Exhibit 1: GPA Request for Quote RFQ 27446



GUAM POWER AUTHORITY

En: B: T2

ATURIDAD ILEKTRESIDAT GUAMAN
P.O. BOX 2977 - AGANA, GUAM U.S.A. 96932-2977

Vincent J. Sanchez - vsanchez@cpa.guam.gov

Tel: (671) 640-9054/9085 Fax: (671) 640-3105

| | | | | |
|---|--------------|--|----------|-------------------|
| Accountability | Impartiality | Competence | Openness | Value |
| Please respond as soon as possible, but no later than: 01/20/2015 G.O.B. Tuesday | | Request for Quotation (RFQ) No: 27446 | | 01/15/2015 |

| | |
|--|---|
| VENDOR: MULTI DATA SERVICES 1) 300 - 0200 2) 300 - 0205 | Please furnish price quotation, delivery time and term based on CIF. Destination: CPA for the items listed below. Please respond by the above date. |
| Quoted by (signature) | Quote Date: _____ Telephone: _____ |

| | |
|--|--|
| Delivery Date Required: 1 week from notice to proceed (NTP) | Offering recyclable and/or biodegradable products: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |
| Delivery Date Offered: _____ | Please separate your offer of recyclable and/or biodegradable products from regular products. |
| Terms: NET 150 THIRTY DAYS | |
| Price Good For: _____ days | |

NOTICE Notwithstanding to whom the services are provided by Service Providers to Government of Guam with Working on Assurances of Guam Property, Section 2203, enacted by P.L. 28-24 and amended by P.L. 28-88.

If a contract for services is entered into on behalf of or for the Government, the provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated or of any offense defined in Article 2 of Chapter 20 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, is who is referred to the Bar Disciplinary Board, shall provide services on behalf of the service provider with the Government of Guam Property, with the exception of public property. Every employee of a service provider in providing services on government property shall be subject to the provisions of an award of a contract with the service provider, which shall include the Government of the conduct of the provider, and will immediately advise such contract provider from providing services on government property. If the service provider is found to be in violation of any of the provisions of the paragraph, then the Government will prohibit the service provider from providing services on government property. The service provider shall take corrective action when necessary, based on advice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider fails to take corrective steps within two (2) years of the date of notice from the Government, then the Government in its sole discretion may suspend the contract and suspend all services until corrective action has been taken.

THIS IS NOT AN ORDER

| ITEM | Qty. | Other Contracted Services | Estimated Price |
|------|------|--|-----------------|
| 1. | | <p>Telephone PABX Lines with 300 DID:</p> <ul style="list-style-type: none"> a) 1 ea. 300 Compound b) 1 ea. 300 Compound <ul style="list-style-type: none"> • High capacity service carried on T1 trunk lines between Voice Control Center and CPASWA Facility • T1 digital signal into 24 channels of 24 lines capacity • Telephone calls are the equivalent of having 24 separate telephone lines • Features to include Caller ID and Information Services • Direct Inland Calling (DIC) for direct station calling | |

**** OR APPROVED EQUAL TO OR BETTER:**

NOTE:
All Requests for Delivery Extensions will be Closely Scrutinized as all Items/Services are crucial to new Customer Installations, maintenance, and ongoing projects.

THANK YOU FOR YOUR RESPONSE
Note: If you are unable to provide a price quote, please annotate "NO QUOTE" and return this Form Vincent Sanchez.

-----Original Message-----

From: Rudolpho C. Manibusan [mailto:rmanibusan@gpagwa.com]

Sent: Friday, January 16, 2015 9:29 AM

To: 'Pancho Madrid (pancho@pdsguam.com)'; 'jsm@pdsguam.com'; 'norma@pdsguam.com'

Cc: Vince F. Taitingfong; 'John Day'; Victor Torres 2; Ely Torres

Subject: Switch over of PRI Lines

Pancho,

Please provide scope of work and time frame to transfer PRI Line Services for PDS - GPA/GWA here at the Fadian Facility to the newly purchased GTA PRI Lines. I would also want to move all existing phone numbers currently in use by both Agencies (GPA and GWA PRI) as well.

v/r

Rudy Manibusan
Computer Services Division
Guam Power Authority
1911 Army Drive
Barrigada, Guam 96913

Ph: 671-648-3062

EXHIBIT

5

**BERMAN
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January 16, 2015

VIA E-MAIL [gbotha@gpagwa.com]; AND, REGULAR MAIL

D. Graham Botha, Esq.
Guam Power Authority
P.O. Box 10287
Tamuning, Guam 96931

Re: OPA-PA-14-013 and Other PDS Pending Protests

Dear Graham:

I will be entering my appearance on behalf of Pacific Data Systems, Inc. ("PDS") in OPA-PA-14-013 today. I understand there is a Pre-Hearing Conference set for January 23 at 10:00 a.m. in this appeal. This appeal is based on the PDS protest filed on November 17, 2014, and denied by GPA on November 21, 2014.

I take this opportunity to remind you that PDS filed a second protest regarding this procurement on November 24, 2014. GPA has not responded to this protest. I encourage it to do so.

In addition, PDS filed a third protest on December 22, 2014. This third protest is a matter of immediate concern because it relates to a RFQ issued by GPA on December 19, 2014. As that protest sets out, this procurement is subject to the automatic stay as a result of either or both of PDS's previous protests. GPA may not avoid the automatic stay by issuing this or any other RFQ.

H:\Christine\BRM\Ltrs\Graham Botha GPA 1162015.doc

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EXHIBIT 46

PDS is legitimately concerned that GPA is ignoring the automatic stay. I brought this problem to the attention of John Benavente by letters dated December 1, 2014, and December 6, 2014.

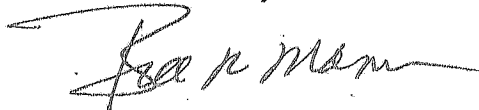
In addition, I am attaching an e-mail that PDS received from Rudolpho Manibusan dated December 16, 2015, which requested PDS to provide the scope of work and time frame to transfer PRI Line Services at the Fadian facility to the newly purchased GTA PRI Lines. PDS assumes this new procurement by GPA must have been done in the form of a RFQ, although PDS was not requested to bid. PDS will respond to this request as it is required by law to do. This is not a waiver of PDS' position that any RFQ issued to GPA is void.

Finally, PDS today received three more RFQs from GPA requesting quotes for services that are covered under the procurement that is subject to the PDS protest, and therefore subject to the automatic stay. See RFQ 27444, 27445, and 27446, which are attached. This will force PDS to file yet three more protests.

It is a serious matter that GPA is continuing to ignore the fact that this procurement is subject to the automatic stay. Any action taken by GPA in violation of the automatic stay is void since there has been no written determination that the award of the contract without delay is necessary. See 5 GCA § 5425(g).

I believe GPA is obligated to rescind all of its pending RFQs and void any contracts issued pursuant to those RFQs. Please advise if GPA will do so voluntarily. Otherwise, PDS will have no option except to make a Motion to Enforce Automatic Stay.

Sincerely,



Bill R. Mann

Attachments: As stated.

-----Original Message-----

From: Rudolpho C. Manibusan [mailto:rmanibusan@gpagwa.com]

Sent: Friday, January 16, 2015 9:29 AM

To: 'Pancho Madrid (pancho@pdsguam.com)'; 'jsm@pdsguam.com'; 'norma@pdsguam.com'

Cc: Vince F. Taitingfong; 'John Day'; Victor Torres 2; Ely Torres

Subject: Switch over of PRI Lines

Pancho,

Please provide scope of work and time frame to transfer PRI Line Services for PDS - GPA/GWA here at the Fadian Facility to the newly purchased GTA PRI Lines. I would also want to move all existing phone numbers currently in use by both Agencies (GPA and GWA PRI) as well.

v/r

Rudy Manibusan
Computer Services Division
Guam Power Authority
1911 Army Drive
Barrigada, Guam 96913

Ph: 671-648-3062



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Stephanie M. Tafferon email: smtafferon@gpagwa.com Tel: (671) 648-3064/3065 Fax: (671) 648-3165

| | | | | |
|---|--------------|--|--|-------|
| Accountability | Impartiality | Competence | Openness | Value |
| Please respond as soon as possible, but no later than: January 16, 2015 | | Request for Quotation (RFQ) No.: 27444 | Today's Date: January 14, 2015 | |
| VENDOR: PACIFIC DATA SYSTEMS P) 300-0220 F) 300-0225 | | Please furnish price quotation, delivery time and term based on CIF. Destination GPA for the items listed below. Please respond by the above date. | | |
| Quoted by: (signature) | | Quote Date: | Telephone: | |
| Delivery Date Required: 1 Week ARO After Notice to Proceed | | Offering recyclable and/or biodegradable products. | | |
| Delivery Date Offered: | | () YES () NO | | |
| Terms: NET (30) THIRTY DAYS | | Please separate your offer of recyclable and/or biodegradable products from regular products | | |
| Prices Good For: _____ days | | | | |

NOTICE: Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property, 565A Section 5253, enacted by P.L. 28-24 and amended by P.L. 28-88:

If a contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam Property, with the exception of public highway. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.

THIS IS NOT AN ORDER

| ITEM | QTY. | DESCRIPTION | Unit Price | Extended Price |
|------|------|---|------------|----------------|
| 1. | Lot | <p>To provide the Guam Power Authority with 5Mbps Metro Ethernet WAN Connection for the following locations to Fedian Server Room:</p> <ul style="list-style-type: none"> - Hagaina (Jutale GPA/GWA) Customer Service Satellite Office - Tenjo Diesel Power Plants - Agana Substation - Talofifa Substation - Apra Hight Substation - Umatac Substation - Yigo Substation <p>Service Level Agreement (SLA):</p> <ul style="list-style-type: none"> - Provider must provide a SLA that will address guaranteed response time, escalation procedures and the terms for any refunds/credits; the terms of this Service Level Objectives shall minimally address: <ul style="list-style-type: none"> -Network Availability of 99.99% -Packet Delivery Rate of 99.99% -Network Latency of 10ms Round Trip -Mean Time to Repair (MTTR) 2 Hours - Provider shall describe guaranteed level of bandwidth for the proposed date services. - Provider shall provide a description of how the SLA is monitored with statistic charts and how these statistics are calculated. - Provider must provide monthly bandwidth usage statistics and reports in .pdf format via email by COB 3rd work day of the following month. <p>NOTE TO VENDOR:</p> <ol style="list-style-type: none"> 1.) All requests for delivery Extensions will be closely scrutinized as all items/services are critical to new customer installations, maintenance, and on-going projects. 2.) Please indicate "AS SPECIFIED" when offer and/or delivery is "AS SPECIFIED." 3.) If you are unable to provide a price quote please annotate "NO QUOTE" and return this Fax to Stephanie Tafferon. | | |

**BID AS ITEM #4
IN GPA IFR
GPA-072-14 WAPCH
IS UNDER PROTEST AND
APPEAL.**



GUAM POWER AUTHORITY

ATURIDÄT ILEKTRESEDÄT GUAHAN
 P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Stephanie M. Taljeron email: smtaljeron@gpawpa.com Tel: (671) 648-3054/3055 Fax: (671) 648-3168

| Accountability | Impartiality | Competence | Openness | Value |
|---|---------------------|---|-----------------|--|
| Please respond as soon as possible, but no later than: January 19, 2015 | | Request for Quotation (RFQ) No.: 27445 | | Today's Date: January 15, 2015 |
| VENDOR: PACIFIC DATA SYSTEMS P) 300-0200 F) 300-0205 | | Please furnish price quotation, delivery time and term based on CIF. Destination GPA for the items listed below. Please respond by the above date. | | |
| Quoted by: (signature) | | Quote Date: | Telephone: | |
| Delivery Date Required: <u>1 Week ARO After Notice to Proceed</u> Delivery Date Offered: _____ Terms: <u>NET (30) THIRTY DAYS</u> Prices Good For: _____ days | | Offering recyclable and/or biodegradable products. () YES () NO Please separate your offer of recyclable and/or biodegradable products from regular products. | | |
| <p>NOTICE: Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property, SOCA Section 5253, enacted by P.L. 26-24 and amended by P.L. 26-98: If a contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 25 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam Property, with the exception of public highway. If any employee of a service provider is providing services on government property and is convicted subsequent to award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.</p> | | | | |
| THIS IS NOT AN ORDER | | | | |
| ITEM | QTY. | DESCRIPTION | Unit Price | Extended Price |
| 1. | Lol | To provide the Guam Power Authority with 10Mbps Metro Ethernet WAN Connection for the following locations to Fedlan Server Room: <ul style="list-style-type: none"> - T&D Compound Dededo - Cabras Compound Dededo Service Level Agreement (SLA): <ul style="list-style-type: none"> - Provider must provide a SLA that will address guaranteed response time, escalation procedures and the terms for any refunds/credits. The terms of this Service Level Objectives shall minimally address: -Network Availability of 99.99% -Packet delivery rate of 99.99% -Network Latency of 10ms round trip -Mean Time to Repair (MTTR) 3 hours - Provider shall describe guaranteed level of bandwidth for the proposed data services. - Provider shall provide a description of how the SLA is monitored with statistics charts and how these statistics are calculated. - Provider must provide monthly bandwidth usage statistics and reports in .pdf format via email by COB 3rd work day of the following month. | | |
| <p>NOTE TO VENDOR:</p> <ol style="list-style-type: none"> 1.) All requests for delivery Extensions will be closely scrutinized as all items/services are crucial to new customer installations, maintenance, and on-going projects. 2.) Please indicate "AS SPECIFIED" when offer and/or delivery is "AS SPECIFIED." 3.) If you are unable to provide a price quote please annotate "NO QUOTE" and return this Fax to Stephanie Taljeron. | | | | |

BID AS ITEM A3
 IN GPA IFB
 GPA-072-014 UNRECH
 IS UNDER PROTEST
 AND APPEAL



GUAM POWER AUTHORITY

ATURIDAT ILEKTRISEDAT GUAHAN
 P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Vincent Jr. Barchinas vbarchinas@gpa.gu.com

Tel: (671) 648-3054/3055 Fax: (671) 649-3166

| | | | | |
|--|--------------|---|------------|--|
| Accountability | Impartiality | Competence | Openness | Value |
| Please respond as soon as possible, but no later than: 01/20/2015 C.O.B Tuesday | | Request for Quotation (RFQ) No.: 27446 | | 01/15/2015 |
| VENDOR: PROFC DATA SYSTEMS 7300-0200 7300-0205 | | Please furnish price quotation, delivery time and term based on CIF. Destination: GPA for the items listed below. Please respond by the above date. | | |
| Quoted by: (signature) | | Quote Date: | Telephone: | |
| Delivery Date Required: <u>1 week from notice to proceed (NTP)</u> | | Offering recyclable and/or biodegradable products. | | |
| Delivery Date Offered: | | () YES () NO | | |
| Terms: <u>NET (30) THIRTY DAYS</u> | | Please separate your offer of recyclable and/or biodegradable products from regular products. | | |
| Price Good For: _____ days | | | | |
| <p>NOTICE: Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property, 6GCA Section 5253, enacted by P.L. 20-24 and amended by P.L. 20-46:</p> <p>If a contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 25 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam Property, with the exception of public highway. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.</p> | | | | |
| THIS IS NOT AN ORDER | | | | |
| ITEM | Qty. | Other Contractual Services | | Extended Price |
| 1. | | Telephone PRI Lines with 100 DID: <ul style="list-style-type: none"> a) 1 ea. T&D Compound b) 1 ea. Cabres Compound <ul style="list-style-type: none"> • High capacity service carried on T1 trunk lines between Telco Central Offices and GPA/GWA Fadian Facility • T1 digital signal into 24 channels of 64 Kbps capacity telephone call each; the equivalent of having 24 separate telephone lines • Features to include Caller ID and Information Services • Direct Inbound Dialing (DID) for direct station calling | | |
| | | ** OR APPROVED EQUAL TO OR BETTER: | | |
| | | NOTE: All Requests for Delivery Extensions will be Closely Scrutinized as all items/services are crucial to new Customer installations, maintenance, and on-going projects. | | |
| | | THANK YOU FOR YOUR RESPONSE Note: If you are unable to provide a price quote please annotate "NO QUOTE" and return this Fax: Vincent Barchinas | | |
| | | | | BID AS PART OF ITEM A8 IN GPA IFB GPA-072-14 WHICH IS UNDER PROTEST AND APPEAL. |

Christine Pangelinan

From: Bill R. Mann [brmann@pacific-lawyers.com]
Sent: Friday, January 16, 2015 4:30 PM
To: Graham Botha (gbotha@gpagwa.com)
Subject: OPA-PA-14-013 and Other PDS Pending Protests
Attachments: Ltr to Graham Botha 01162015 with attachments.pdf

Please see letter dated January 16, 2015, with attachments thereto.

Bill R. Mann
Berman O'Connor & Mann
111 W Chalan Santo Papa Ste 503
Hagatna, Guam 96910
Tel (671) 477-2778
Fax (671) 477-4366

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