

DATE: 4/20/2015

TIME: 1:55  AM  PM BY: M.B.

STATEMENT ANSWERING ALLEGATIONS OF APPEAL PA: 15-005

(As required by 2 G.A.R. §12105(g))

I. RELEVANT BACKGROUND

A. GPA SOLICITS BIDS FOR MULTI-STEP BID GPA-072-14, VOICE AND DATA SERVICES

On September 18, 2014, Guam Power Authority (“GPA”) issued Invitation for Multi-Step Bid, GPA-072-14, Voice and Data Services. Procurement Record, Tab ”3”. The IFB was a two-step bid process consisting of the technical bid and submission of a sealed price proposal. Three companies submitted bids in response to the IFB, Pacific Data Systems, Inc. (PDS), GTA Teleguam Holdings, LLC (GTA), and Docomo Pacific, Inc. (Docomo), and all three companies were qualified in the phase I technical bid review process. Prior to submission of technical bids and sealed price proposals, the three bidders had an opportunity to submit questions regarding the IFB. GPA issued amendments I to IV in response to these questions, and other amendments to clarify the IFB. Procurement Record, Tab “7-10”.

Amendment IV, dated October 16, 2014, clarified certain questions raised by PDS, with PDS asking specific questions regarding the site surveys and the PDS proposal as to how services should be grouped. (Tab “10”). Other amendments notified prospective bidders of the changes to Bid Milestone dates.

The technical review committee qualified all three bidders, GTA, PDS and Docomo, as technically qualified under the multi-step process. On November 6, 2014, the sealed bid proposals of the three qualified bidders were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of Bids which lists the line item bids for

ORIGINAL

A1-A13, with A7-13 bundled together. The bid abstract, containing the GTA, PDS and Docomo Price Proposals, are contained in the procurement record at Tab "27." Each of the three bidders submitted detailed price proposals in accordance with the bid documents.

On October 29, 2014, the evaluation committee met and requested clarification from both PDS and GTA regarding their technical proposals. (Tab 22). On October 30, 2014, GPA received response letters from PDS and GTA regarding their technical proposals. (Tab 23). On November 6, 2014, the evaluation committee sent clarification letters again to PDS and GTA regarding their price proposals. (Tab 31). On November 7, 2014, GPA received response letters from PDS and GTA regarding their price proposals. (Tab 32). GPA had specified in its bid that prices be listed per site. Based on the PDS and GTA responses, the evaluation committee had to make calculations such that all three bidders were compared equally, and the committee prepared an analysis based on those clarifications. (Tab 34). On November 14, 2014, GPA provided the bidders with a Notice of Intent of Possible Award for items A1-A6 to Docomo, and A7-A13 to PDS. On or about November 17, 2014, PDS sent a protest letter to GPA. GPA denied the protest on November 21, 2014. Procurement Record, Tab "38". IP&E filed a protest with the Office of Public Auditor on December 9, 2014. Tab "45". The OPA rendered a decision in favor of GPA on March 11, 2015. PDS filed a second protest on April 7, 2015, based on its November 24, 2014 protest letter, substantial parts of which protest have already been addressed in OPA-PA-14-013, and ruled upon by the OPA in favor of GPA. No timely appeal has been taken by PDS to the Superior Court of Guam in OPA-PA-14-013.

## II. DISCUSSION

- A. THE DOCOMO BID WAS RESPONSIVE, AND THE AWARD FOR VOICE AND DATA WAS PROPERLY AWARDED TO DOCOMO FOR LINE ITEMS A1-A6.

Procurement law requires that GPA award to the lowest responsible and **responsive** bidders. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bid. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2). Further, any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive. 2 GAR, Div. 4, Chap. 3, §3109(n)(3)(c).

PDS contends that GPA improperly awarded items A3, A4 and A5 to Docomo, as PDS states that it was the lowest bidder on the bidders' abstract for items A3 and A4, and that GPA should have considered the lowest overall bid for items A3, A4 and A5. It is clear from the bid specifications that each line item for A3, A4, and A5 is evaluated separately. On November 6, 2015, GPA asked for clarification from PDS and GTA regarding several line items, specifically items A3 and A4. PDS submitted a response on November 7 to GPA, and with regard to A3 its response is as follows: "Each site is counted as one site (Fadian to Cabras = 1 site, T&D to Fadian = 1 site); **price shown on the PDS bid form is per site.**" With regard to A4 (which has 8 sites) its response is "**Yes, the price listed is per site.**"

The Abstract of Bids lists the price proposals for all three bidders for the different line items. Only with the price clarifications provided by PDS and GTA, was the evaluation committee able to properly provide an analysis of the price proposals. GPA should have disqualified both PDS and GTA based on the deficient price proposals submitted that failed to provide specific line item prices as requested in the IFB. Specifically, it is clear the Docomo provided the lowest responsive price for items A1-A6, and GPA made the evaluation according to the evaluation criteria specified in the IFB.

On the abstract Docomo properly included the price for both sites at \$7,200 per year for 3 years or a total of \$21,600. As PDS indicated in its response its price of \$6,000; \$5,700; and

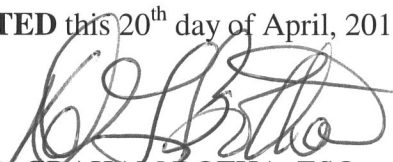
\$5,415.25 for 3 years was per site, so the actual price for both sites as requested by GPA is \$17,115 x 2 sites = \$34,230 for 3 years. Clearly under any mathematical calculations, the Docomo bid of \$21,600 for 3 years is lower than the total PDS bid for 2 sites of \$34,230. Similarly, in item A4, the Docomo bid was \$16,800 per year for 3 years for a total of \$50,400. The PDS bid was \$3,000; \$2,850; and \$2,707.50 or a total of \$8,557.50 for 3 year **per site**. Since there are 8 sites for item A4, then the actual PDS bid is \$8,557.50 x 8 = \$68,460 which is once again greater than the Docomo bid of \$50,400 for 3 years. While PDS concedes it was not the low bidder for item A5, the bid abstract is clear: Docomo is \$7,200 per year or a total of \$21,600 for 3 years and PDS is \$9,600; \$9,120; and \$8,664 for a total of \$27,384. Again, Docomo is the low bidder for item A5 as \$21,600 is less than \$27,384.

GPA properly made an award to Docomo for line items A1-A6, as it deemed Docomo the lowest, **responsive** and responsible bidder for each line item in A1-A6 as specified in the IFB.

#### CONCLUSION

GPA requests that the appeal of PDS be dismissed, and that the Public Auditor award all legal and equitable remedies that GPA may be entitled to as a result.

**RESPECTFULLY SUBMITTED** this 20<sup>th</sup> day of April, 2015, by:

  
D. GRAHAM BOTHA, ESQ.  
GPA Legal Counsel

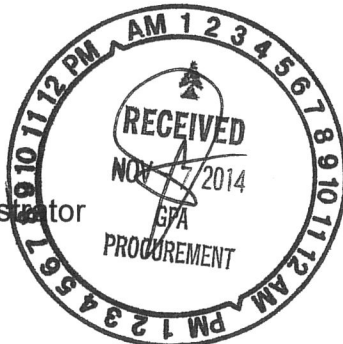




November 7, 2014

VIA HAND DELIVERY

Jamie L. C. Pangelinan  
Supply Management Administrator  
Guam Power Authority  
P. O. Box 2977  
Hagatna, GU 96932



RE: Invitation for Multi-Step Bid No. GPA-072-14 for Voice & Data Services

Dear Ms. Pangelinan:

Further to your request for clarification received yesterday, November 6, regarding Bid No. GPA-072-14, please find the following responses from Pacific Data Systems on each points requested.

For A3 – Does the T&D to Fadian and Cabras to Fadian count as one site or is T&D to Fadian counted as one site and Cabras to Fadian counted as one site?

**PDS Response:** Each site is counted as one site (Fadian to Cabras = 1 site, T&D to Fadian = 1 site); price shown on the PDS bid form is per site.

For A4 – Is the price listed per site?

**PDS Response:** Yes, the price listed is per site.

For A6 – Is the price listed per mobile device?

**PDS Response:** No, the price listed is for a total of 4x Mobile devices.

For A7 – Is the price listed per PRI line?

**PDS Response:** No, the price listed is for a total of 3x PRI line service for the Fadian location.

For A8 – Is the price listed per PRI line?

**PDS Response:** Yes, the price listed is per PRI line.



For A9 – Is the price listed per SIP line?

**PDS Response:** No, the price listed is for a total of 2x SIP Trunking service.

For A11 – Is the price listed per POTS line?

**PDS Response:** Yes, the price listed is per POTS line.

For A12 – Is the price listed per POTS line?

**PDS Response:** Yes, the price listed is per POTS line.

For A13 – Is that price per DID line?

**PDS Response:** No, the price listed is for a total of 700x DID telephone numbers/service.

If you have any questions regarding this response, please do not hesitate to contact me at 300-0202 or via email at [john@pdsguam.com](mailto:john@pdsguam.com). PDS appreciates the opportunity to participate in this procurement.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Day', is written over a light blue horizontal line.

John Day  
President/COO



# GUAM POWER AUTHORITY

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

November 06, 2014

Pacific Data Systems  
185 Illipog Drive, HBC Suite 204A  
Tamuning, Guam 96913  
T: 300-0200  
F: 300-0265

ATTN: **John Day**  
**President & COO**

RE: **Invitation for Multi-Step Bid No. GPA-072-14 for Voice & Data Services**

Dear Mr. Day:

The Evaluation Committee has reviewed your company's Price Proposal and requests clarification on the following:

- For A3 - Does the T&D to Fadian and Cabras to Fadian count as one site or is T&D to Fadian counted as one site and Cabras to Fadian counted as one site?
- For A4 - Is the price listed per site?
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- For A7 - Is the price listed per PRI line?
- For A8 - Is the price listed per PRI line?
- For A9 - Is the price listed per SIP line?
- For A11 - Is the price listed per POTS line?
- For A12 - Is the price listed per POTS line?
- For A13 - Is that price per DID line?

A response to this request is appreciated no later than 4:00 P.M., Friday, November 07, 2014. Should you need any further information, please do not hesitate to contact me at (671) 648-3054/55 or fax 648-3185.

Respectfully,

PLEASE ACKNOWLEDGE RECEIPT BY  
SIGNING BELOW AND RETURN THIS FAX  
TO MELISSA UNCANGCO, FAX NO: 648-3185.

J. PEREZ *[Signature]* 11/6/14  
PRINT/SIGNATURE DATE

PDS

COMPANY

*[Signature]*  
JAMIE L.C. PANGELIMAN  
Supply Management Administrator

APPRECIATE YOUR IMMEDIATE RESPONSE.  
THANK YOU.

GPA PROCUREMENT DIVISION  
TEL: (671) 648-3054/55





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November 06, 2014

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Respectfully,

  
JAMIE L.C. PANGELINAN  
Supply Management Administrator

# Fax Confirmation Report

Date & Time : NOV-06-2014 04:42PM THU  
Fax Number : 6716483165  
Fax Name : PROCUREMENT  
Model Name : WorkCentre 4260

No.	Remote Station	StartTime	Duration	Page	Mode	Job Type	Result
001	3000265	11-06 04:41PM	00'36	001/001	G3	HS	Success

## Abbreviations:

HS: Host Send      PL: Polled Local      EC: Error Correct      TS: Terminated by System  
HR: Host Receive    PR: Polled Remote    MP: Mailbox Print      RP: Report  
WS: Waiting Send    MS: Mailbox Save    TU: Terminated by User    G3: Group3



## GUAM POWER AUTHORITY

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TO MELISSA UNCANGCO. FAX NO.: 648-3165.

PRINT/SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

COMPANY \_\_\_\_\_

APPRECIATE YOUR IMMEDIATE RESPONSE.  
THANK YOU.

GPA PROCUREMENT DIVISION  
TEL: (671) 648-3054/55

JAMIE L.C. PANGELLUAN  
Supply Management Administrator

**Melissa C Uncangco**

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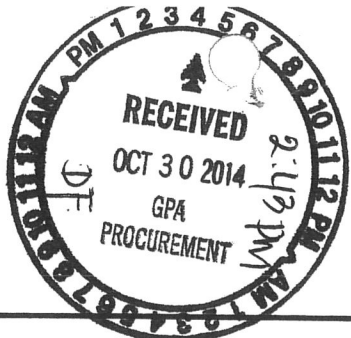
**From:** Melissa C Uncangco  
**Sent:** Thursday, November 06, 2014 4:47 PM  
**To:** 'jsm@pdsquam.com"  
**Subject:** Clarification Letter - MS GPA-072-14, Voice & Data Services  
**Attachments:** img01350

Hafa Adai!

Kindly acknowledge receipt of attached Clarification Letter relative to MS GPA-072-14.

Regards,

Melissa C. Uncangco  
Buyer II  
GPA Procurement Division  
T: 648-3054/55  
F: 648-3165



JOHN MANTANONA  
GOVERNMENT ACCOUNT MANAGER  
185 ILIPOG DRIVE • SUITE 204A  
TAMUNING, GU 96913  
DIRECT: (671) 300-0229  
E-MAIL: jsm@pdsguam.com

October 30, 2014

Via Hand Delivery

Jamie L.C. Pangelinan  
Supply Management Administrator  
Guam Power Authority  
Procurement Management Materials Supply  
GPA Central Office, 1<sup>st</sup> Floor  
1911 Route 16  
Harmon, Guam 96929

**RE: GPA's Request for Clarification Letter for IFB GPA-072-14 – WAN Latency**

Dear Ms. Pangelinan:

Reference the attached letter from GPA that PDS received yesterday on October 29, 2014. PDS now provides the following response.

Yes the PDS latency specification of 20ms regarding WAN connection was a typo, the proper service specification should have been 10ms latency. Please see the attached corrected Service Level Agreement (SLA) with the proper specification.

Thank you for this opportunity to provide this clarification to our Technical Proposal, please let us know if you have any other questions or requests for clarification.

Sincerely,

John Day  
President

Attachment GPA Letter dated 10/29/14  
Corrected PDS SLA



## Service Level Agreement

**1 Overview:** Pacific Data Systems (PDS) Service Level Agreement (SLA) defines service activation, assurance and performance parameters for PDS services.

The purpose of this SLA is to clearly explain the arrangement for PDS services being provided to \_\_\_\_\_ (CUSTOMER). This SLA is intended to outline the requirements and expectations with processes and support in the delivery of reliable services. This SLA is a living document that evolves over time, with the additional of new requirements and infrastructure availability.

There are two key elements of this SLA:

- Service activation (“service provisioning”)
- Service assurance/performance
- Billing and Customer Service

**2 Normal Business Hours:** Pacific Data Systems normal office business hours are 8 am— 5 pm Monday thru Friday, excluding Government of Guam Holidays.

**3 Contact Information:** PDS provides a 24/7 account support team contact in the event of system outages or degradation in service. CUSTOMER may contact PDS by telephone, fax or email and receive personalized 24 hour, 7 day customer support for all services that PDS provides.

**4 Services Covered By This SLA:** The following PDS services covered under this SLA include:

- Wide Area Network services
- 4G Wireless Data Services
- Internet Access
- Analog Voice Services (POTS)
- Digital Voice Services (ISDN PRI-SIP Trunks) with Direct Inward Dialing (DID) service

This SLA will be attached as an addendum to each of the appropriate service order forms for the services noted above. Additional services may be added and the terms of this SLA modified via mutual agreement between PDS and CUSTOMER.

**5 Scope of Agreement:** The core processes covered by this agreement are:

- Service provisioning process
- Service assurance/performance process
- Billing and Customer Service

**5.1 Service Provisioning Process:** PDS shall complete service provisioning of a communication services within 30 business days during normal business hours. Service delivery is however conditional on availability of facilities required to provide the services (Unbundled Network Elements), access to the local loop and/or to the CUSTOMER premises.

### Pacific Data Systems

185 Ilipog Drive, Tamuning, GU 96913 Tel: (671) 300-0200 | Fax: (671) 300-0265 | [www.pdsguam.com](http://www.pdsguam.com)



CUSTOMER will not hold the PDS liable for acts of omission by the local loop provider. However, if a problem does occur, PDS will act proactively to minimize any service provisioning delays, and where it is at fault, ensure that CUSTOMER receives any applicable credit entitled under this agreement.

Service provisioning milestones:

- PDS will acknowledge service orders within two (2) business days of being received via e-mail or fax.
- PDS shall arrange the appointment for the service installation within two business days of communication service line installation at the service location.
- PDS shall contact CUSTOMER on the day of the service installation and commissioning completion. Order Completion Notice (OCN) will be provided.
- PDS billing for services will commence upon with the next billing cycle after the OCN has been issued. Service charges shall be pro-rated for any partial billing periods.

**5.2 Service Assurance/Performance:** Service assurance includes:

- Service restoration and response to trouble tickets
- Network/Service availability definition.
- Network/Service availability.
- Performance measurements and monitoring.

**5.2.1 Service Restoration:** CUSTOMER is responsible for isolating and rectifying technical faults within its Local Area network (LAN) equipment and software. In cases where CUSTOMER believes that the fault is not in their equipment or internal network, but in the PDS supplied services, CUSTOMER will notify PDS via PDS' trouble ticketing procedures (see attached).

The PDS Support team will confirm the trouble ticket received from CUSTOMER and provide updates as to the nature of the fault, repair action taken and estimate resolution timeframe. Service restoration may be conditioned on the PDS Support team having access to CUSTOMER premises.

The PDS Support team shall restore critical service outages (MTTR) within four hours of receiving a trouble ticket except for problems that may be outside the reasonable control of PDS. PDS has designed CUSTOMER's services to provide failover services in the event of a prolonged service outage. During these periods the CUSTOMER's service will be operational but may not operate at full capacity and shall not constitute a service outage.

**5.2.2 Network Availability/Performance Definitions**

**Time Interval:** Time interval is one calendar month beginning and ending on the first day of each month at 00:00 Chamorro Standard Time. All measures will be taken within that particular month.

**Planned outages:** A planned outage is the periodic pre-announced occurrences when the network element will be taken out of service for maintenance or upgrade. PDS shall notify CUSTOMER of planned outages a minimum of 72 hours in advance. Network maintenance

**Pacific Data Systems**

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outages shall not be eligible for credit adjustments unless the outages last for longer than 4 hours.

**Service outage:** Service outage is when a network service or path is inaccessible if either:

- It is not possible to both transmit and receive between the two ends of the path for a period in excess of 5 minutes, or
- The performance of the path is severely degraded to an extent that the service is effectively unavailable for VOIP services.

**Service Availability Guarantee:** The network availability guarantee is 99.999%.

PDS delivered service availability is expressed as a percentage of time for the service period (typically a calendar month). Consequently:

$$\text{Service availability} = \frac{(\text{Total minutes}) \times \text{No. of Services} - \text{Service outage time in minutes}}{(\text{Total minutes} \times \text{No. Services})} \times 100$$

**IP Network Performance Latency Guarantee:** The PDS IP Network will provide the following latency performance based on traffic between CUSTOMERS router facing the PDS network and the following locations:

- VLAN/VPN Performance (local wireline service between On-Net Locations): LT 10ms.
- VLAN/VPN Performance (local wireless service between On-Net Locations): LT 60ms.
- Latency to Public Internet Access Point from Customer Router Port: LT 150 ms.
- Router Hops from Customer Router to first Public Internet Access router: LT 12 hops.
- Packet loss from Customer Router and last PDS router before Public Internet ingress point: LT 1%.

**5.2.3 Performance Monitoring:** PDS will provide CUSTOMER with monitoring tools to evaluate the performance of applicable services. PDS will provide CUSTOMER will service availability reporting based on a mutually agreed to reporting cycle (see sample). These reports will provide summarized information related to overall system availability for all services and fault analysis for any service outages that may have occurred within the reporting period.

**5.3 Billing and Customer Service:** PDS will assign an Account Manager to coordinate business activities with CUSTOMER and to act as a single point of contact with PDS related to any business activities related to new orders, changes to existing orders, billing, purchase order updates, past due billings, billing corrections, requests for information, requests for credits, or any other questions related to business dealings between PDS and CUSTOMER.

**6 Incorrect Callout Fee:** PDS may require payment for incorrect callout fees. Incorrect callout fees apply where a CUSTOMER reported fault is found to be in the network or equipment owned/maintained by CUSTOMER. CUSTOMER is allowed up to two incorrect callouts per year before any fees apply.

**7 Terms and Conditions:** PDS will provide a \$250 credit to CUSTOMER when applicable service levels are not achieved for two consecutive reporting periods (at least two months). Service Credits will be provided for any service outage that is greater than 24 hours. PDS will calculate a service credit for the outage on a prorated basis for all effected services using the

## Pacific Data Systems



monthly service charges for the service. The amount of the credit shall not exceed the an amount equal to the monthly charges for the applicable service. Any credit will be applied to CUSTOMER's PDS account.

PDS will not be held responsible for service or performance failures that may have occurred for reasons outside the reasonable control of PDS. Such events or situations include; severe weather conditions/Typhoon, Fire, Vandalism, Acts of God, Government action or requirement, strikes or labor work stoppages, failure by CUSTOMER to provide a safe or acceptable environment for the installation/operation of required PDS equipment, failure by CUSTOMER to provide PDS with access to service facilities, prolonged power failure, 3rd party damages to PDS telecommunications infrastructure, Internet or service provider service outages external to the PDS network.

If CUSTOMER believes that they are entitled to a credit that has not been provided, CUSTOMER must submit a claim for credit to PDS within ninety (90) days of the outage(s) or event from which the credit was applicable. CUSTOMER's claim must include sufficient information to allow the claim to be investigated by PDS. PDS will confirm receipt of the claim within two (2) business days and will respond with a decision within ten (10) business days.

CUSTOMER may cancel specific services under this agreement for cause and without penalty if PDS does not meet the minimum service performance defined herein for each of the services in three consecutive reporting periods.

**Attachments:**

- PDS Trouble Ticketing Procedures
- PDS Escalation Process
- Sample Service Quality Report

**Pacific Data Systems**





# GUAM POWER AUTHORITY

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

October 29, 2014

Pacific Data Systems  
185 Illipog Drive, HBC Suite 204A  
Tamuning, Guam 96913  
T: 300-0200  
F: 300-0265

ATTN: John Day  
President & COO

RE: Invitation for Multi-Step Bid No. GPA-072-14 for Voice & Data Services

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*The WAN latency requirements shall be 10ms or better, the proposal states 20ms. Is this a typing error?*

A response to this request is appreciated no later than Thursday, October 30, 2014, close of business. Should you need any further information, please do not hesitate to contact me at (671) 648-3054/55 or fax 648-3165.

Respectfully,

  
JAMIE L.C. PANGELINAN  
Supply Management Administrator

PLEASE ACKNOWLEDGE RECEIPT BY  
SIGNING BELOW AND RETURN THIS FAX  
TO MELISSA UNCANGCO. FAX. NO.: 648-3165.

J. PEREZ  10/29/14  
PRINT/SIGNATURE DATE

PDS

COMPANY

APPRECIATE YOUR IMMEDIATE RESPONSE.  
THANK YOU.

GPA PROCUREMENT DIVISION  
TEL.: (671) 648-3054/55

Message Confirmation Report

29-OCT-2014 12:24 WED

WorkCentre M20 Series  
Machine ID : Pacific Data Systems  
Serial Number : RYU412612  
Fax Number : 6713000265

Name/Number : 96483165  
Page : 1  
Start Time : 29-OCT-2014 12:24 WED  
Elapsed Time : 00' 30"  
Mode : STD G3  
Results : O.K

Page: 1/1



**GUAM POWER AUTHORITY**

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

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*The WAN latency requirements shall be 10ms or better, the proposal states 20ms. Is this a typing error?*

A response to this request is appreciated no later than Thursday, October 30, 2014, close of business. Should you need any further information, please do not hesitate to contact me at (671) 648-3054/55 or fax 648-3165.

Respectfully,

  
JAMIE L.C. PANGELINAN  
Supply Management Administrator

PLEASE ACKNOWLEDGE RECEIPT BY  
SIGNING BELOW AND RETURN THIS FAX  
TO MELISSA UNGANSCO. FAX NO.: 648-3165.

J. PEREZ  10/29/14  
PRINT/SIGNATURE DATE

PDC  
COMPANY

APPRECIATE YOUR IMMEDIATE RESPONSE.  
THANK YOU.

GPA PROCUREMENT DIVISION  
TEL.: (671) 648-3060/65