



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF, PACIFIC DATA SYSTEMS, INC., <p style="text-align: center;">Appellant</p>	}	APPEAL NO: OPA-PA-15-003 DECISION
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I. INTRODUCTION

This is the Decision of the Public Auditor for appeal number OPA-PA-15-003, which was filed by PACIFIC DATA SYSTEMS, INC., (hereafter referred to as "PDS") on March 25, 2015 regarding the GENERAL SERVICES AGENCY, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM's (hereafter referred to as "GSA") March 10, 2015 denial of PDS's March 3, 2015 Protest concerning Request for Quotation No. RFQ15000381 (Service and Installation for 1G Dark Fiber from the Office of Technology (OOT) to the Governor's Complex) (hereafter referred to as "RFQ"). The Public Auditor holds that the Settlement Agreement between GSA and PDS concerning GSA-IFB-064-011 does not apply to the RFQ because the RFQ was soliciting dark fiber and not data services. However, the Public Auditor finds that the specification used for Item 1 of the RFQ violates 5 G.C.A. §5268(c) and G.A.R., Division 4, Chapter 4, §4102(a)(1) because it does not clearly describe the OOT's requirements for the dark fiber being solicited. Accordingly, PDS's appeal is hereby DENIED in part and GRANTED in part.

II. FINDINGS OF FACT

The Public Auditor in reaching this Decision has considered and incorporates herein the

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1 procurement record and all documents submitted by the parties, and all arguments made during
2 the May 20, 2015 hearing for Appellant's Appeal. Based on the aforementioned record in this
3 matter, the Public Auditor makes the following findings of fact:

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5 1. On February 16, 2015, GSA issued the RFQ.¹

6 2. The RFQ required, in relevant part, the following:

7 a. Item 1 of the RFQ solicited for Service for 1G Dark Fiber from OOT to the
8 Governor's Complex for eight months.²

9 b. Item 2 of the RFQ solicited for the installation of a dedicated fiber strand to
10 the OOT switch using point to point fiber with no equipment/hardware in between and that the
11 vendor awarded the contract for the RFQ would provide a 1G SFP fiber module for (1) 3 COM
12 5500 and (1) brocade switch.³

13 3. On February 16, 2015, GSA, via facsimile, transmitted the RFQ to DOCOMO
14 PACIFIC; TELEGUAM HOLDINGS, LLC; and PDS. These companies received the RFQ that
15 same day.⁴

16 4. On February 17, 2015, PDS inquired with GSA, via email, as to whether the RFQ
17 solicited for "Intra-State Telecom Service (a circuit that connects two points on Guam)."⁵

18 5. On February 18, 2015, PDS advised GSA that it was still awaiting GSA's answers to its
19 questions concerning whether: (1) the terms of the purchase order that would be issued for the
20 RFQ will be subject to termination upon the resolution of a pending procurement appeal

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22 _____
23 ¹ RFQ, Tab 5, Agency Procurement Record (APR) filed on April 2, 2015

24 NOTE: It appears in the email correspondence between the parties in this matter that there was an
25 earlier version of the RFQ that was issued on or about February 12, 2015 and that the RFQ issued
26 on February 16, 2015 was a revision of the earlier RFQ. However, the OPA will not review the
27 earlier version of the RFQ because the parties did not allege any issues concerning the earlier
28 version of the RFQ.

² RFQ Item 1, *Id.*

³ RFQ Item 2, *Id.*

⁴ Fax Confirmation Sheets, Tab 4, *Id.*

⁵ Email from John Mantanona of PDS to Tianna Sarrosa of GSA dated February 17, 2015, page 3, Exhibit 2, Notice
of Appeal filed March 25, 2015 and APR, Tab 1

1 involving Invitation for Bid No. GSA-IFB-11-064; and (2) the RFQ required Intra-State Telecom
2 Services (a circuit that connects two points on Guam).⁶

3 6. On February 19, 2015, PDS advised GSA that PDS had not received a response to its
4 two prior inquiries that it had submitted to GSA.⁷

5 7. On February 23, 2015, PDS requested that GSA answer its two inquiries and GSA
6 responded on the same day stating that it would advise PDS of the answers to PDS's inquiries as
7 soon as GSA had them.⁸

8 8. Later in the day on February 23, 2015, GSA responded to PDS's inquiries by stating
9 that the purchase order that would be issued for the RFQ would not terminate upon the resolution
10 of the procurement appeal involving GSA-IFB-11-064. GSA answered PDS's second inquiry by
11 stating that the dedicated point to point fiber will be the connection, it will handle all traffic
12 from the requesting department.⁹

13 9. On March 3, 2015, eight days after receiving GSA's responses to its inquiries, PDS
14 filed its protest letter alleging that the RFQ violated the Settlement Agreement between GSA and
15 PDS concerning PDS's protest and subsequent procurement appeal regarding GSA-IFB-064-11,
16 because the services solicited by the RFQ were not conditioned on the terms of said settlement
17 agreement.¹⁰

18 10. On March 10, 2015, GSA issued its Protest Decision denying PDS's March 3, 2015
19 protest on the following grounds: (1) GSA stated that due to the current litigation concerning
20 GSA-IFB-064-11, GSA was soliciting the services required through an emergency procurement;
21 and (2) GSA stated that there was no issue concerning "Dark Fiber" in the bid document.¹¹

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25 ⁶ Email from John Mantanona of PDS to Tianna Sarrosa of GSA dated February 18, 2015, page 2, *Id.*

26 ⁷ Email from John Mantanona of PDS to Tianna Sarrosa of GSA dated February 19, 2015, page 2, *Id.*

27 ⁸ Email from John Mantanona of PDS to Tianna Sarrosa of GSA and reply email from Sarrosa to Mantanona dated
28 February 23, 2015, page 1, *Id.*

⁹ Email from Tianna Sarrosa of GSA to John Mantanona of PDS dated February 23, 2015, page 1, *Id.*

¹⁰ PDS Protest Letter dated March 3, 2015, Tab 1, APR filed on April 2, 2015

¹¹ GSA Protest Decision dated March 10, 2015, Tab 2, *Id.*

1 11. On March 25, 2015, 15 days after GSA issued its Protest Decision, PDS filed this
2 appeal.¹²

3 III. ANALYSIS

4 Pursuant to 5 G.C.A. §5703, the Public Auditor shall review GSA's March 10, 2015
5 Decision denying PDS's March 3, 2015 protest *de novo*. The issue in this appeal is whether the
6 RFQ violates the Settlement Agreement between GSA and PDS concerning GSA-IFB-064-11.
7 To decide this issue, the OPA must determine (1) whether the RFQ solicited for 1G Data
8 Service, which would violate the Settlement Agreement, or (2) whether the RFQ solicited for
9 Dark Fiber, which would not violate the Settlement Agreement.
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11 A. The RFQ Does Not Violate the Settlement Agreement.

12 GSA argues that the technology solicited for in the RFQ is not the same technology that
13 is the subject of the Settlement Agreement between GSA and PDS concerning GSA-IFB-11-064
14 and the Public Auditor agrees. PDS concedes that if the RFQ solicited for Dark Fiber instead of
15 1G Data Services, then the provisions of its Settlement Agreement with GSA regarding GSA-
16 IFB-064-11 would not apply.¹³ Dark Fiber is simply unused optical fiber that has been installed
17 but is not being used in a fiber-optic communications system and the term "dark" is used to
18 describe this type of optical fiber because light pulses, which are used to transmit data through
19 the system, are not pulsing through it.¹⁴
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21 PDS believes that the RFQ is asking for more than Dark Fiber service because it is asking
22 for SFPs.¹⁵ The term "SFP" is the acronym for Small Form-Factor Pluggable Transceiver, which
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25 ¹² Notice of Appeal filed March 25, 2015

26 ¹³ Admissions of Fact, page 2, Lines 6 to 11, PDS's Witness List, Admission of Fact, and List of Issues filed on
27 May 8, 2015.

28 ¹⁴ Techopedia Definition of Dark Fiber, PDS Exhibit 5, and the May 20, 2015 Testimony of Peter C. Duenas

¹⁵ *Id.*

1 is a compact transceiver used in data communication and telecommunications networks and is
2 used to light optical fibers in a fiber optic communications system.¹⁶

3 As stated above, the Public Auditor finds that the plain language of the RFQ solicited for:
4 (1) service for 1G Dark Fiber from OOT to the Governor's Complex for eight months; and (2)
5 the installation of a dedicated fiber strand to the OOT switch using point to point fiber with no
6 equipment/hardware in between and that the vendor awarded the contract for the RFQ would
7 provide a fiber module and brocade switch.

8 The Public Auditor also finds that the OOT's intent was to solicit for the equipment that
9 would provide the Governor's Complex with faster access to the Government of Guam's fiber
10 optic communications system, and that the vendor awarded the RFQ contract would only be
11 required to install a dedicated optical fiber between the OOT in Hagåtña and the Governor's
12 Complex in Adelup.¹⁷

13 The Public Auditor finds that the RFQ did not solicit for data services because the OOT
14 did not want to go through another service provider's telecommunication system, and desired to
15 only use the dedicated fiber optic communication system between the OOT and the Governor's
16 Complex.¹⁸ Based on the foregoing findings, the Public Auditor holds that the Settlement
17 Agreement between GSA and PDS concerning GSA-IFB-064-011 does not apply to the RFQ
18 because the RFQ was soliciting for dark fiber and not data services. Despite this holding, the
19 Public Auditor must review whether the RFQ clearly expressed that it solicited for the
20 installation of dark fiber.

21 **B. The RFQ Specifications Fail to Clearly Describe the Services Being Solicited.**

22 PDS also alleges that the RFQ specifications violate Guam's Procurement Laws because
23 they are ambiguous.¹⁹ Generally, specifications mean any description of the physical or
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26 ¹⁶ Techopedia Definition of SFP, PDS Exhibit 6, and the May 20, 2015 Testimony of Peter C. Duenas

27 ¹⁷ May 20, 2015 Testimony of Benigno B. Camacho

28 ¹⁸ *Id.*

¹⁹ PDS Hearing Brief filed on May 13, 2015, Page 1, Line 19

1 functional characteristics, or the nature of a supply, service, or construction item. 5 G.C.A.
2 §5260 and 2 G.A.R., Division 4, Chapter 4, §4101(a)(4).

3 The purpose of specifications is to serve as a basis for obtaining a supply, service, or
4 construction item adequate and suitable for the Government of Guam's needs in a cost effective
5 manner, and specifications shall describe the salient technical requirements or desired
6 performance characteristics of the supplies or services being solicited. 5 G.C.A. §5268(c) and 2
7 G.A.R., Div. 4, Chap. 4, §4102(a)(1). Here, as stated above, the RFQ's specification for Item 1
8 stated: "Service for 1G Dark Fiber from OOT to Governor's Complex."²⁰

9 PDS found this language to be confusing because it could mean two types of services;
10 dark fiber service or 1G data services.²¹ Additionally, without clarification concerning which
11 service GSA was soliciting for, PDS, and very likely the other two vendors GSA sent the RFQ
12 to, could not submit a quote. Based on the foregoing, the Public Auditor finds that the
13 specification used for Item 1 of the RFQ violates 5 G.C.A. §5268(c) and 2 G.A.R., Div. 4, Chap.
14 4, §4102(a)(1) because it does not clearly describe the OOT's requirements.

15 **C. The RFQ Specifications Must Be Cancelled or Revised.**

16 As stated above, the RFQ violates 5 G.C.A. §5268(c) and 2 G.A.R, Div.4, Chap. 4,
17 §4102(a)(1) because it does not clearly describe the OOT's requirements. If prior to an award it
18 is determined that a solicitation is in violation of law, then the solicitation shall be cancelled or
19 revised to comply with the law. 5 G.C.A. §5451(a) and (b) and 2 G.A.R., Div.4, Chap.9
20 §9105(a)(1) and (2).

21 Hence, the RFQ's specifications must be cancelled or revised to comply with Guam's
22 Procurement Laws and Regulations by clearly describing the salient technical requirements or
23 performance characteristics of the dark fiber being solicited.

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27 ²⁰ RFQ page 1, Tab 5, APR filed on April 2, 2015

28 ²¹ PDS Hearing Brief filed on May 13, 2015, page 1, Line 14 to 18 and May 20, 2015 Testimony of Peter C. Duenas and John S. Mantanona

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IV. CONCLUSION

Based on the foregoing the Public Auditor hereby determines the following:

1. The Public Auditor holds that the Settlement Agreement between GSA and PDS concerning GSA-IFB-064-011 does not apply to the RFQ because the RFQ was soliciting for dark fiber services and not data services.

2. The Public Auditor finds that the specification used for Item 1 of the RFQ violates 5 G.C.A. §5268(c) and 2 G.A.R., Div. 4, Chap. 4, §4102(a)(1) because it does not clearly describe the OOT's requirements.


3. No more than 30 days after this Decision is issued, GSA shall revise the RFQ's Specifications to comply with Guam's Procurement Laws and Regulations by clearly describing the salient technical requirements or performance characteristics of the dark fiber being solicited for in the RFQ.

4. PDS' Appeal is hereby DENIED in part and GRANTED in part as set forth above.

This is a Final Administrative Decision. The Parties are hereby informed of their right to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with Part D of Article 9, of 5 G.C.A. within 14 days after receipt of a Final Administrative Decision. 5 G.C.A. §5481(a).

A copy of this Decision shall be provided to the parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website at www.opaguam.org.

SO ORDERED this 22nd day of June, 2015.


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PUBLIC AUDITOR