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DATE: July 7 2015

TIME: 1:15 AM PM

FILE NO OPA-PA: N-007

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BY: ANACRIS LEGASPI

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STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(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

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. PDS filed a third protest on May 29, 2015, based on the May 14, 2015 denial of its November 24, 2014, protest letter.

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 7th day of July, 2015, by:


D. GRAHAM BOTHA, ESQ.
GPA Legal Counsel