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FILE NO OPA-PA: 15-007

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7 **OFFICE OF PUBLIC ACCOUNTABILITY**

Docket No. OPA-PA-15-007

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

**HEARING BRIEF OF PACIFIC DATA
SYSTEMS, INC.**

12
13 **I. INTRODUCTION**

14 This Appeal is from GPA's erroneous determination that Docomo was the low
15 bidder for Bid Items A-3 and A-4. The GPA Bid Abstract for all bidders was provided
16 as Exhibit "4" in the PDS Exhibit Binders provided to the OPA, GPA and Docomo on
17 August 7, 2015. Those Abstracts show that PDS was the low bidder for Bid Items A-3
18 and A-4. This is confirmed by the bid forms themselves, Exhibit "5" for PDS, Exhibit
19 "6" for GTA, and Exhibit "7" for Docomo. A summary of these documents shows the
20 following:

21 Service	PDS Bid	Docomo Bid	GTA Bid
22 A-3 Bid (Yr1/Yr2/Yr3)	\$6,000/\$5,700/\$5,415	\$7,200/\$7,200/\$7,200	\$7,800/\$7,800/\$7,800
A-4 Bid (Yr1/Yr2/Yr3)	\$3,000/\$2,850/\$2,707.50	\$16,800/\$16,800/\$16,800	\$4,800/\$4,800/\$4,800

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24 However, GPA allowed Docomo to make an oral change to its bid at the time of
25 bid opening. The evidence at the hearing will show that after the PDS and GTA bids
26 were opened and read allowed, and in the process of opening the Docomo bid,
27 Docomo's representative Judy Rosario made extensive comments regarding the
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2 Docomo bid. A transcript of those comments was provided as Exhibit "10" in the PDS
3 Exhibit Binder. Although the bid forms clearly require that the prices be stated "per
4 site," Ms. Rosario stated that Docomo's bid price for Bid Items A-3 and A-4 was for all
5 sites instead of per site. In any event, and even without reference to Ms. Rosario's
6 statements, GPA improperly altered Docomo's bid after bid opening.

7 **II. ARGUMENT**

8 The Public Auditor recently had occasion to rule on a very similar case in *In the*
9 *Appeal of G4S Secure Solutions (Guam) Inc.*, OPA-PA-15-004. That procurement was for
10 security guard services for three DPHSS sites in the northern, central, and southern
11 regions. The unit of measurement was in months, and the quantity was twelve. In
12 other words, the correct way to bid was the bidder's price for the three sites times
13 twelve months. Pacific Island Security Agency ("PISA") bid the procurement correctly
14 by multiplying its bid for the three sites times twelve months, or $\$24,881.94 \times 12 =$
15 $\$298,583.28$.

16 The other bidder, G4S Secure Solutions (Guam) Inc. ("G4S"), bid the amount for
17 only one site at $\$8,165.99$ times twelve months for a bid of $\$97,991.90$. G4S argued that
18 "unit" meant site and not months. It alternatively argued that it should be allowed to
19 correct its bid by multiplying the bid of $\$97,991.90$ by three. That would result in a bid
20 of $\$293,975.64$, which would be a few thousand dollars lower than PISA's bid.

21 The Public Auditor correctly analyzed the issues in terms of 2 GAR 4
22 § 3109(m)(4)(C). That section provides:

23 (C) Mistakes where intended correct bid is evident. If the
24 mistake and the intended correct bid is clearly evident on
25 the face of the bid document, the bid shall be corrected to the
26 intended correct bid and may not be withdrawn. Examples
27 of mistakes that may be clearly evident on the face of the bid
28 document are typographical errors, errors in extending unit
prices, transportation errors, and arithmetical errors.
(emphasis added)

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The Public Auditor rejected G4S's argument and stated on page 7 of the Decision:

The Public Auditor finds that G4S's intended correct bid of a Unit Price of \$8,165.99 x 3 locations and Extended Amount of \$293,975.64 is not evident on the face of G4S's bid document. There is no indication in G4S's bid that it intended its unit price and extended amount to be multiplied by three locations to reach the total contract amount. Consequently, G4S is not entitled to correction of its bid under 2 GAR 4 § 3109(m)(4)(C), and G4S's request that it be awarded the procurement in the amount of \$293,975.64 is denied. (emphasis added)

As applied to this case, there is nothing on the face of Docomo's bid that it intended its Bid Item A-3 to be divided by two, or its Bid Item A-4 to be divided by eight. The G4S Decision is thus right on point.

The problem with the positions of both GPA and Docomo is that they refer to documentation other than the face of Docomo's bid. For example, GPA refers to a request for clarification that it sent to PDS and GTA. The "clarifications" from PDS and GTA for Bid Items A-3 and A-4 simply confirmed that their bids were per site, which is exactly what the bid form required. It is difficult to understand why GPA requested these "clarifications," for Bid Items A-3 and A-4, except possibly to obscure the real issue.

Docomo bases its argument on a spreadsheet that it states was included in its bid price proposal. This spreadsheet is an attachment to the Declaration of James W. Hoffman II, submitted with Docomo's Comments to Agency Report. This spreadsheet has not previously been submitted by GPA as part of the procurement record or Agency Report, which raises the question of whether it was actually part of Docomo's bid price proposal. In any event, the Public Auditor is limited to considering the "... face of the bid document ..." The Public Auditor would be on a very slippery slope if it allowed bidders to modify their actual bid by reference to documents other than the

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bid itself, or by oral statements made by a bidder's representative at the bid opening.
The G4S Decision is strict, but rightfully so, and should be followed here.

Before closing, PDS notes that GPA has failed to submit the Certification of Record required both by 5 GCA § 5250 and by the Hearing Officer's Decision and Order Re Pre-Hearing Motions. Undersigned counsel has sent two reminder letters to counsel for GPA to no avail. These two letters are attached to this Brief. The Public Auditor is urged to take appropriate action in light of GPA's apparently intentional failure to comply with this requirement.

III. CONCLUSION

In conclusion, if there is no indication on the face of Docomo's bid that it intended Bid Item A-3 to be divided by two, or Bid Item A-4 to be divided by eight. The face of the bids show that PDS was the low bidder for both Items A-3 and A-4, and both those items should be awarded to PDS.

DATED this 14th day of August, 2015.

Respectfully submitted,

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

By: 
BILL R. MANN

CONFIRMATION

Christine Pangelinan

From: Christine Pangelinan [chrisap@pacific-lawyers.com]
Sent: Monday, July 13, 2015 9:06 AM
To: Graham Botha (gbotha@gpagwa.com)
Cc: 'John Day'
Subject: OPA-PA-15-007

Graham:

I received your Statement Answering Allegations of Appeal. I note that you did not include the Certification of Record required by 5 GCA § 5250. This was discussed at the Pre-hearing Conference, although I note that requirement was apparently inadvertently left out of the Scheduling Order. In any event, it was clear at the conference that GPA was required to file this, which is mandatory according to the statute. Please do file and serve GPA's Certification of Record.

Christine A. Pangelinan, Secretary
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CONFIRMATION

Christine Pangelinan

From: Bill R. Mann [brmann@pacific-lawyers.com]
Sent: Tuesday, August 04, 2015 2:16 PM
To: Graham Botha (gbotha@gpagwa.com)
Cc: 'John Day'
Subject: OPA-PA-15-007

Graham:

This is to follow-up on my e-mail to you of July 13, 2015 regarding the requirement that GWA include the Certification of Record required by 5 GCA § 5250 with its procurement record. Please note that at the bottom of page 3 and top of page 4 on the Decision and Order Re Pre-Hearing Motions dated July 30, 2015, *nunc pro tunc* to June 30, 2015, Hearing Officer Camacho specifically ordered GPA to include the Certification of Record in the procurement record. Nevertheless, GWA has to date failed to do so.

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