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PROCUREMENT APPEALS

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8 *Attorney for the Guam Power Authority*

OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

13 IN THE APPEAL OF)
14)
15 PACIFIC DATA SYSTEMS, INC.) **DOCKET NO. OPA-PA-15-007**
16) **APPELLEE'S REMEDIES BRIEF**
17 Appellant.)
18 _____)

21 **COMES NOW**, the GUAM POWER AUTHORITY, by and through its counsel of
22 record, D. GRAHAM BOTHA, ESQ., and submits its Remedies Brief as follows.

24 **ARGUMENT**

25 Guam Power Authority (GPA) submits that it properly awarded items A1-A5 to Docomo
26 Pacific Inc. (Docomo), the lowest responsive and responsible bidder. A responsive bidder is a
27 person who submitted a bid which conforms in all material respects to the Invitation for Bids. 5
28 GCA §5102(g), 2 GAR Div. 4, §3109(n)(2). Pacific Data Systems, Inc. ("PDS") admits that
29 Docomo was the lowest responsive bidder for items A-1 and A-2, but contends now that PDS is
30 the lowest bidder for items A-3 and A-4, and admits that PDS is not the lowest bidder for item A-
31 5. At the hearing PDS withdrew its appeal regarding item A-5, as PDS previously contended that
32 despite the clear language of the bid that each item is evaluated separately, it believed that items
33 A-3, A-4 and A-5 should be grouped together.

34 PDS also asserts that GPA allowed an improper bid modification of Docomo's bid for
35 items A-3 and A-4 after bid opening. This is based on a verbal statement allegedly made by a

1 Docomo representative at the bid opening. There is no evidence submitted that shows either that
2 the Docomo representative had the authority to modify any bid as alleged, or that GPA acted in
3 any manner in reliance on those alleged statements.


4 A careful review of the bid proposals submitted by Docomo, GTA and PDS, specifically
5 regarding item A-4, indicates that while both Docomo and GTA specifically listed all eight sites
6 required, that PDS only listed seven sites, failing to list the Apra Heights site, which was one of
7 the eight sites which GPA listed in the bid specifications. The PDS president, John Day,
8 characterized this as a mere omission and oversight. The PDS counsel insisted that the OPA
9 should take a hard line, as demonstrated by previous OPA decisions, and it is entirely appropriate
10 that a hard line be taken. Clearly, it is evident that PDS failed to provide eight sites as required by
11 the GPA bid specifications in the PDS price proposal. Providing only seven sites, for whatever
12 reason; omission, oversight or negligence, is insufficient to satisfy the requirements of the GPA
13 bid specifications, and PDS must be disqualified from bidding on at least item A-4, if not the entire
14 bid. The PDS theory seems to be, well at least PDS listed a per site price for other the other seven
15 sites, required by GPA, even if PDS omitted the eighth site required. The other two bidders,
16 Docomo and PDS clearly complied with listing all eight sites in their price proposals.

17 GPA submits that appellant PDS is not entitled to any remedies and its appeal should be
18 dismissed, based on the merits of the case. This case is distinguishable from recent OPA cases, In
19 the Appeal of G4S Security Systems, OPA-PA-13-013, in that there is no allegation of violation of
20 the automatic stay by award of a contract after a protest was filed. No contract has been awarded
21 pending the outcome of this third protest by PDS. GPA has awarded several RFQ to provide
22 temporary services to the new GPA Fadian location while the protest is resolved.

23 GPA respectfully requests that the OPA find that the appellant PDS is not entitled to any
24 remedies, and to dismiss the appeal with prejudice.

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RESPECTFULLY SUBMITTED this 23rd day of August, 2015.



D. GRAHAM BOTHA, ESQ.
GPA Legal Counsel

A4. 5Mbps METRO ETHERNET WAN SITES (PRICE PER SITE)

| <p>Julale Customer Services</p> <p>Tenjo Diesel Power Plant</p> <p>Agana Substation</p> <p>Talofoto Diesel/Substation</p> <p>Apra Heights Substation</p> <p>Potts Junction Substation</p> <p>Umatac Substation</p> <p>Yigo Substation</p> <p>Barrigada Substation</p> | | | | |
|--|----------------------|----------------------|--------------------------|-------------------------|
| 3-year Base Period | | | 1-Year Extension Options | |
| 1st year | 2 nd year | 3 rd Year | 1 st yr Extn | 2 nd yr Extn |
| (\$ in 2 decimals) | (\$ in 2 decimals) | (\$ in 2 decimals) | (\$ in 2 decimals) | (\$ in 2 decimals) |
| \$ _____ | \$ _____ | \$ _____ | \$ _____ | \$ _____ |
| (In Words) | (In Words) | (In Words) | (In Words) | (In Words) |

A4. 5Mbps METRO ETHERNET WAN SITES (PRICE PER SITE)(Amended)

Julale Customer Services
Tenjo Diesel Power Plant
Agana Substation
Talofoto Diesel/Substation
Potts Junction Power Pole, Rt.3 Mabololo Dr.
Umatac Substation
Yigo Substation

| 3-year Base Period | | | 1-Year Extension Options | |
|------------------------|--|--|--|---|
| 1st year | 2 nd year | 3 rd Year | 1 st yr Extn | 2 nd yr Extn |
| \$ 3,000.00 | \$ 2,850.00 | \$ 2,707.50 | \$ 2,572.13 | \$ 2,443.52 |
| Three Thousand Dollars | Two Thousand Eight Hundred Fifty Dollars | Two Thousand Seven Hundred and Seven Dollars and fifty cents | Two Thousand Five Hundred Seventy Two Dollars and thirteen cents | Two Thousand Four Hundred Forty Three Dollars and fifty two cents |