



RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: November 23, 2015

TIME: 2:06 AM PM BY: AR

FILE NO OPA-PA: 15-012

Office of the Attorney General

Elizabeth Barrett-Anderson

Attorney General of Guam

Robert M. Weinberg

Assistant Attorney General

590 S. Marine Corps Drive

Tamuning, Guam 96913 • USA

(671) 475-3324 • (671) 472-2493 (Fax)

rweinberg@guamag.org

Attorneys for Defendants

IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of)	DOCKET NO. OPA-PA-15-012
)	
PACIFIC DATA SYSTEMS,)	PURCHASING AGENCY EXHIBIT LIST
)	
Appellant,)	
)	

In addition to the Agency Report already on file, Purchasing Agency **General Services Agency** (“GSA”) anticipates all or parts of the following documents may be offered and introduced as evidence at any formal proceedings in this matter:

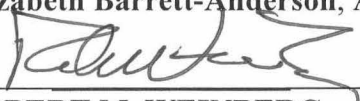
- A. Bid Status Notice from General Services Agency to Pacific Data Systems (PDS) Notifying PDS that its bid was rejected due to High Price and advising bid recommended for award was G4S

ORIGINAL

- B. Protest Letter dated September 17, 2015 from Pacific Data Systems to Claudia Acfalle, Chief Procurement Officer, General Services Agency, noting that as of July 28, 2015 PDS was on notice of alleged grounds from which to assert that G4S did not submit a responsive bid which, if true, meant that G4S's bid should have been rejected within 14 days of July 28, 2015.
- C. Letter dated September 18, 2015 from Claudia S. Acfalle, Chief Procurement Officer to Mr. John Day re: Protest on GSA Bid No. 080-15 denying protest as untimely.
- D. G4S Contractor's License.
- E. Document Dated July 9, 2015 – Question submitted by Pacific Data Systems dated 7/06/15.
- F. Inter-Departmental Memorandum from Anita T. Cruz, Buyer Supervisor, to Claudia S. Acfalle, Chief Procurement Officer, dated August 31, 2015 – Analysis on Invitation to Bid No. GSA-080-15, Telecommunications/Network "Optical Fiber Solutions."

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General



ROBERT M. WEINBERG
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing upon opposing counsel by hand delivery addressed to:

John Day
Pacific Data Systems
185 Ilipog Drive, Suite 204A
Tamuning, GU 96913

this 25th day of November, 2015.



ROBERT M. WEINBERG
Assistant Attorney General

GENERAL SERVICE AGENCY
 (Ahensian Setbision Hinirat)
 Government of Guam
 P.O. Box FG, Agana, Guam 96910
 Tel: 477-1710-13 Fax: 472-4217 / 475-1716/27

Accountability * Impartiality * Competence * Openness * Value

BID STATUS

August 31, 2015

PACIFIC DATA SYSTEMS (PDS)
 Attn: John Day, President/COO
 185 Ilipog Drive, HBC Ste. 204A,
 Tamuning, Guam 96913
 Tel: (671) 300-0229/ Fax (671) 300-0265

BID INVITATION NO.: GSA-080-15

OPENING DATE: July 20, 2015

TELECOMMUNICATION / NETWORK "OPTICAL FIBER SOLUTIONS"

The following is the result of the above-mentioned bid. Refer to the items checked below.

- Cancelled (in its entirety), or partially cancelled due to:
 - Insufficient funds;
 - Change of specifications; or
 - Insufficient number of bidders.
- Rejected due to:
 - Late submission of bid;
 - No bid security or insufficient bid security;
 - Not meeting the delivery requirement as stated in the IFB;
 - Non-conformance with the specifications: "Lease Term"
 - High price
 - Others

CSM
J. Mantanong
 9/3/15
 Pacific Data Systems

REMARKS: _____

Bid recommended for award: G4S in the total amount of \$118,941.85

REMARKS: Thank you for your participation with this bid. Please send your authorized representative to pickup your original bid status and Bid Bond/Cashiers Check

[Signature]
 CLAUDIA S. ACFALLE
 Chief Procurement Officer

[Signature] **A**



September 17, 2015

VIA HAND DELIVERY

Ms. Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
Government of Guam
Piti, Guam 93910

RECEIVED
SEP 17 11 28 AM '15
GOVERNMENT OF GUAM

Re: Protest of Notice of Intent to Award Decision G4S in GSA-IFB-080-15

Dear Ms. Acfalle:

This is a Protest by Pacific Data Systems ("PDS") under G.C.A. 5 § 5425(a) to the Notice of Intent to Award decision made by the General Services Agency ("GSA") in the above referenced bid and evidenced by the GSA Notice of Intent to Award sent to PDS by GSA on September 3, 2015 (a copy of the Notice of Intent to Award is attached as Exhibit "A").

On July 28, 2015 GSA provided PDS with a copy of the G4S bid in this procurement in response to a PDS Freedom of Information Act request. This timely protest of GSA's actions in this procurement are based upon the following issues that have been determined after a review of the G4S bid and the GSA Notice of Intent to Award:

I. G4S FAILED TO SUBMIT A VALID CONTRACTORS LICENSE REQUIRED TO MEET BID TERMS AND CONDITIONS AND GUAM LAW FOR THE TYPE OF WORK DEFINED IN THIS PROCUREMENT; THE G4S BID MUST BE REJECTED AS NON-RESPONSIVE.

The work defined by the IFB required the bidder to install buried fiber optic facilities between two Government buildings; the Guam Judiciary building the Office of Civil Defense. The only viable physical route between these two locations is to install this cable along or crossing public roads or rights of way. Guam law requires that the bidder would have to be a licensed contractor¹ in order to be qualified to perform this type of work. Page 22 of 30 of the bid (see Exhibit "B"), the Bid General Terms and Conditions #4; also requires that potential bidders be properly licensed to do business on Guam in order to be considered for award.

Sw. B

¹ 21 GCA REAL PROPERTY CH. 70 CONTRACTORS § 70100(b)



The G4S bid did not include any evidence that G4S possessed the required contractor's License at the time of the bid in order to meet this requirement of the Bid Terms and Conditions. For this reason, the G4S bid cannot be considered for award and should be rejected as non-responsive.

II. THE G4S BID FAILED TO MEET BIDDER QUALIFICATION REQUIREMENTS; THE G4S BID MUST BE REJECTED AS NON-RESPONSIVE.

5 G.C.A. § 5211(g) states that "a responsive bid is one that conforms in all material aspects to the Governments bid specifications". In this procurement, the bid required Bidders to provide evidence of 10 years of past experience in the type of work defined in the bid (Reference Bid Amendment 3 at page 1, see Exhibit "C"). This was a significant requirement by GSA in this procurement and was further validated by the Amendment that issued in response to clarifications questions that PDS asked related to this requirement (See Exhibit "D"). In GSA's response to the PDS question, GSA re-affirmed the requirement for the bidder to have had a minimum of 10 years of past experience performing the type of work defined in the Bid Specifications.

Given the scope of work required by the bid the type of experience that a Bidder would be required to possess bidders (10 years of experience) would need to include technical expertise/past experience related to the Design and construction of Fiber Optic Outside Plant (OSP) telecommunications facilities. This is due to the fact that most significant portion of the project involves over 3,000 feet of Outside Plant construction between the Guam Judiciary building the Office of Civil Defense. This OSP work would require creation of construction designs, building and encroachment permits, utility clearances, highway bonds, and other government permitting requirements associated with this type of construction work.

While G4S did provide information on its experience with security services, video surveillance, and structured cabling systems, G4S provided no information regarding any projects that would demonstrate any experience with Outside Plant (OSP) fiber optic construction projects. The bid requirements were very clear that bidders were required to show evidence of 10 years of past experience related to the types of work involved with this procurement. Further the Bid General Terms and Conditions #14 Competency of Bidders required G4S to show evidence of its ability to perform according to the requirements of the bid.

The failure by G4S to have the required 10 years of experience for the type of work required by this procurement is a significant omission and deficiency that should



have resulted in the rejection of the G4S for lack of Bidder Qualifications and failure to comply with the bid specifications and requirements.

For the above reasons, the G4S Bid should have failed a technical evaluation by GSA and been declared as non-compliant and non-responsive to the Bid Requirements of GSA-IFB-080-15.

This Protest can be resolved by GSA rescinding the Notice of Intent to award and issuing a new Bid Status rejecting the G4S bid for the reasons noted above. GSA can then issue a new award Notice to the next lowest responsible and responsive bidder; Pacific Data Systems.

GSA is reminded that PDS has made this timely Protest according to 5 G.C.A. § 5425(g) and that any further action in this procurement by GCC is stayed until this Protest is resolved. Reference 5 G.C.A § 525(b), PDS is available to meet with you to discuss this protest and engage in good faith discussions to resolve the issues noted above.

Sincerely,

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

John Day
President

Attachments: As stated.

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

Ray Tenorio
Lieutenant Governor

Anthony C. Blaz
Director

148 Route 1 Marine Corps Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

September 18, 2015

Memorandum

Mr. John Day
President
Pacific Data Systems
185 Illipog Drive
HBC Suite 204A
Tamuning Guam 96913

Re: Protest on GSA Bid No. 080-15

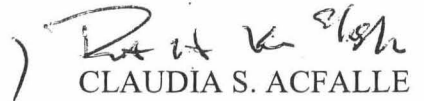
We are in receipt of your protest dated September 17, 2015, in which you are protesting the award on the above stated bid. In your memorandum, you indicated that on July 28, 2015, you were provided by GSA, a copy of the winning bidder's (G4S) bid in response to a PDS Freedom of Information Request.

As such, you knew on July 28, 2015, the basis for the protest. 5 GCA Section 5425(a) states in pertinent part:

The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know the facts giving rise thereto.

Since you received the bid submittal of G4S on July 28, 2015, you have fourteen (14) days from that day to submit a protest. That period ended on 11, 2015. As such, your protest is untimely and therefore is DENIED.

You have the right to seek any administrative or judicial review authorized by law.


CLAUDIA S. ACFALLE
Chief Procurement Officer



CONTRACTOR'S LICENSE

EDDIE BAZA CALVO
Governor of Guam

RAY TENORIO
Lt. Governor of Guam

Pursuant to the provisions of Chapter VII Title XI of the Government of Guam and the Rules and Regulations of the Contractors License Board, the Executive Director of Contractors hereby issues this license to:

G4S Security Systems (Guam), Inc.

To engage in the business or act in the capacity of a contractor in the following classifications

B, C11, C13, C13A, C14, C15, C17, C19, C20 & C68 (Solar Systems, Communications/Telecommunications)

This license is the property of the Executive Director of Contractors, not transferable, and shall be returned to the Executive Director upon demand when suspended, revoked, or invalidated for any reason. It becomes void if not renewed on or before the expiration date.

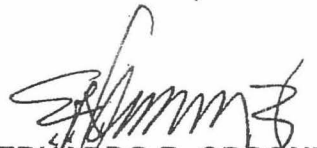
Signature of RME
RME #

Signature of LICENSEE
License # CLB08-0364

GRT # 200600168
Issued: June 23, 2015

Certificate # C-0615-0592
Expires: June 30, 2016




EDUARDO R. ORDONEZ
EXECUTIVE DIRECTOR



Handwritten initials: E.C.D.

Eddie Baza Calvo
Governor



Anthony C. Blaz
Director, Dept. of Admin.

GENERAL SERVICES AGENCY
Government of Guam
18 Route 1 Marine Drive Corp
Piti, Guam 96915

Ray Tenorio
Lt. Governor

Alfred F. Duenas
Deputy Director

July 09, 2015

**INVITATION FOR BID GSA-080-15
TELECOMMUNICATION/NETWORK
"OPTICAL FIBER SOLUTION"**

Questions submitted by Pacific Data Systems dated 7/06/15

Question 1:

The bid requirements that state that a minimum of 15 years of fiber optic experience is required to bid on this procurement. Though PDS has been in business since 1967 and is well experienced in the design, construction, installation, and operations of Fiber Optic Networks having installed over 150,000 feet of fiber optic outside plant cable, we do not have 15 years of experience. We believe of contractor should be have prior experience in the design and installation of fiber optic cable systems, but we believe 15 years is unrealistically restrictive and as such would violate Guam Procurement Laws (see 5 G.C.A. § 5265) which requires a procurement to be designed to encourage maximum completion.

For the above reason, we request that GSA is an amendment that changes the requirement for bidder experience from 15 years to 5 or a maximum of 8 years of experience with the bidder required to provide a list of 5 successfully completed FO projects over the last 5 years.

Response: See attached (Amendment #3)

Question 2:

After further of the above referenced Bid, we have noted a significant ambiguity in the specifications related to how the Fiber Optic (FO) cable is to be installed/buried in the ground; is the FO cable to be directly buried in the ground without conduits. The current specifications, summarized below and highlighted on the attached, are not clear and indicate both methods, "direct bury" and "bury in conduit", should be used for the installation of the FO cable in this project:

- See page 29 SPECIFICATIONS, Scope of Work: Direct buried solution from Judiciary of Guam MIS, computer Room to Guam Homeland Security TELCON room. Vendor not allowed directing burying their fiber other than government requirement
- See page 29 SPECIFICATIONS, Optical Fiber Cabling – OSP backbone, single mode, 12 strand cable (direct buried) run from Judiciary of Guam – MIS Computer Room to Guam Homeland Security TELCON room.
- See page 29 SPECIFICATIONS, Optical Fiber Cabling – Fiber must be conduits and be buried with a minimum depth of 24 inches or greater.

This is a significant ambiguity and must be clarified by GSA since the type of FO cable to be used in the project and the design of the construction to support conduit (and the pulling/installation of FO cable into the conduit) will greatly impact the cost and complexity of the project.

Response: See attached (Amendment #3)

Please Print

ACKNOWLEDGEMENT COPY (Re-fax to GSA)

Received BY: Francis L. Lopez

Date: 07/09/15

Vendor Name: Compacite

Fax #: 475-1727

Ev. E.

Eddie B. Calvo

GENERAL SERVICES AGENCY

Raymond Tenorio

Governor

(Ahensian Setbision Hinirat)

Lt. Governor

Government of Guam

P.O. Box FG, Agana, Guam 96910

Anthony C. Blaz

Director, Dept. of Administration

Alfred F. Duenas

Deputy Director

Inter-Departmental Memorandum

August 31, 2015

To: Chief Procurement Officer

From: Buyer Supervisor

Subject: Analysis on Invitation for Bid No. GSA-080-15
Telecommunication/Network "Optical Fiber Solutions"

Buenas yan Hafa Adai! Invitation for Bid No. GSA-080-15 was officially announced and advertised in the Marianas Variety on June 24, 2015. The bid was officially opened and read on July 20, 2015 at 10:00am. Three (3) prospective bidders expressed interest by acknowledging receipt of the bid package. Two (2) submitted the bid packages namely.

Pacific Data Systems - Offers the following:

- 1.1 Telecommunication/Networks
"Optical Fiber Solution" 1 Job = \$155,800.00
Delivery: As specified

All affidavits submitted, Bid Bond #AGA-2441-B submitted in the amount of 15% TBA dated 7/16/15 from First Net Insurance Company for the 15% of total bid amount as required by 5 GCA § 5212


G4S Security Solution - Offers the following:

- 1.1 Telecommunication/Networks
"Optical Fiber Solution" 1 Job = \$118,941.85
Delivery: 3-4 Weeks

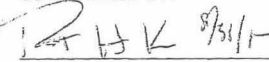
All affidavits submitted, Bid Bond #4107697 submitted in the amount of \$1,000,000.00 dated 7/13/15 from Safeco Insurance Company of America for the 15% of total bid amount as required by 5 GCA § 5212

It is hereby recommend by the Office of Homeland Security, Mr. Charles Esteves, Administrator that this bid be awarded to **G4S Security Solutions in the amount of \$118,941.85** for being the lowest most responsive and responsible bidder.

CERTIFICATION: Pursuant to 5 G.C.A. Section 5250, I hereby certify under penalty of perjury that I am the procurement office responsible for administering the solicitation of the attached contract, and that I have caused to be prepared and now maintain a full and complete record of the procurement as required by law.


Anita T. Cruz

CONCURRED BY:



CLAUDIA S. ACFALLE
Chief Procurement Officer

