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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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9:20am
FILE NO. OPA-PA-10-005

6 **OFFICE OF PUBLIC ACCOUNTABILITY**
7 **PROCUREMENT APPEALS**

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

) Docket No. OPA-PA-10-005

) **REPLY OF PACIFIC DATA SYSTEMS,
INC. TO RESPONSE OF GUAM
COMMUNITY COLLEGE**

13
14 **I. INTRODUCTION**

15 On August 2, 2011, Pacific Data Systems, Inc. ("PDS") filed its Motion to Enforce
16 Public Auditor's Decision Regarding Award of Costs. When no response from Guam
17 Community College ("GCC") was received to that Motion, PDS filed a follow-up
18 Motion for Entry of Award Against Guam Community College on September 8, 2011.
19 Finally, on September 13, 2011, GCC filed its Response.

20 **II. ARGUMENT**

21 The position of PDS is set forth in its Motion filed on August 2, 2011. As
22 discussed in that Motion, the Public Auditor in her Decision of January 12, 2011,
23 awarded PDS its "... reasonable costs incurred in connection with the solicitation and
24 its August 3, 2010 protest, including PDS's reasonable bid preparation costs, excluding
25 PDS's attorney's fees ..." The Decision further provided that "... GCC may object to
26 PDS's cost demand by filing the appropriate motion with the Public Auditor no later
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2 than fifteen (15) days after PDS submits such cost demand to GCC.” See Decision at p.
3 20.

4 As set forth in PDS’ August 2, 2011 Motion, PDS did submit its cost demand to
5 GCC on May 27, 2011. However, GCC did not file any objection to that cost demand
6 with the Public Auditor. Instead, 40 days later on July 6, 2011, the attorney for GCC
7 wrote a letter to John Day of PDS which stated certain objections to the cost demand.

8 John Day then responded with his letter to GCC’s attorney dated July 12, 2011,
9 where he did attest to the accuracy of the PDS cost demand, and pointed out that the
10 fifteen day period for GCC to object to the cost demand by filing a Motion with the
11 Public Auditor had expired. The subsequent failure of GCC to make any payment
12 regarding the cost demand led to the filing of the PDS Motion of August 2, 2011, and
13 follow-up Motion of September 8, 2011.

14 The GCC Response in this matter dated September 13, 2011 should be stricken.
15 The Public Auditor’s Decision required any objection of GCC to the PDS cost demand to
16 be in the form of a Motion filed with the Public Auditor no later than fifteen days after
17 the cost demand. Since the cost demand was made by PDS on May 27, 2011, any
18 objection by GCC was due to be filed with the Public Auditor no later than June 13,
19 2011. GCC has entirely failed to follow the procedure required by the Decision of
20 January 12, 2011, and the Public Auditor is requested to order GCC to pay PDS the
21 amount owed immediately.

22 Although GCC’s untimely objections to the PDS cost demand should not be
23 considered at this time, nevertheless PDS does want to state for the record that its cost
24 demand is reasonable. For example, GCC objects to the rate of pay that PDS defined for
25 various administrative and document handling functions, claiming that these tasks
26 should have been performed at minimum wage. The Full Time Equivalent (FTE) costs
27 shown by PDS for these tasks is in line with Department of Labor guidelines established
28 for companies performing work for the Government of Guam. GCC should be well

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familiar with these guidelines since a copy was included with the GCC procurement. Attached as EXHIBIT A is a listing of minimum hourly pay rates (before benefits) for various work functions. We have highlighted the rates related to administrative tasks that PDS has claimed in order to provide validation of the reasonableness of the PDS claim. PDS also notes that this dispute by GCC relates to only 9 hours of the PDS claim.

GCC also questions the amount of time spent by PDS in the bid preparation and Bid response. GCC seems to ignore the fact that it was the comprehensive nature of the GCC specifications that required the time spent by PDS to analyze and prepare a compliant response. This work was not performed by any one person, but was instead performed by a team of highly skilled professionals. Each member of this team is identified in the PDS cost claim worksheet. A review of the GCC Bid specifications, the numerous bidder questions and GCC responses, bid amendments, and the final comprehensive PDS bid response (which was rated as the best by GCC) clearly show that the time spent by PDS as documented in the PDS claim are reasonable.

PDS does request that due to the lengthy delay caused by GCC, interest at 6% be added to the requested amount of \$21,299.17 from 15 days after the date of the original cost demand on May 27, 2011, or June 13, 2011, to the date of decision in this matter.

DATED this 28th day of November, 2011.

Respectfully submitted,

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

By: 
BILL R. MANN

WD 05-2147 (Rev. 12) was first posted on www.edol.gov on 08/24/2010
REGISTRY OF WAGE DETERMINATIONS UNDER THE SERVICE CONTRACT ACT
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON D.C. 20216

Shirley F. Ebbesen Director
Division of Wage Determinations

Wage Determination No.: Z005-2147
Revision No.: 12
Date of Revision: 08/19/2010

States: Guam, Northern Marianas, Wake Island

Area: Guam Statewide
Northern Marianas Statewide
Wake Island Statewide

Prings Benefits Required Follow the Occupational Listing

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		12.50
01012 - Accounting Clerk II		13.53
01013 - Accounting Clerk III		15.59
01026 - Administrative Assistant		17.27
01046 - Data Entry Operator		15.38
01051 - Data Entry Operator I		10.48
01052 - Data Entry Operator II		11.98
01060 - Dispatcher, Motor Vehicle		13.06
01070 - Document Preparation Clerk		12.25
01090 - Duplicating Machine Operator		12.25
01111 - General Clerk I		10.29
01112 - General Clerk II		11.26
01113 - General Clerk III		12.32
01120 - Housing Referral Assistant		17.18
01141 - Messenger Courier		10.12
01191 - Order Clerk I		12.23
01192 - Order Clerk II		12.25
01261 - Personnel Assistant (Employment) I		14.33
01262 - Personnel Assistant (Employment) II		14.80
01263 - Personnel Assistant (Employment) III		16.48
01270 - Production Control Clerk		18.34
01280 - Receptiionist		8.67
01290 - Rental Clerk		11.10
01300 - Scheduler, Maintenance		13.75
01311 - Secretary I		13.75
01312 - Secretary II		15.38
01313 - Secretary III		17.15
01320 - Service Order Dispatcher		11.57
01410 - Supply Technician		17.57
01420 - Survey Worker		15.24
01531 - Travel Clerk I		11.61
01532 - Travel Clerk II		12.57
01533 - Travel Clerk III		13.44
01611 - Word Processor I		12.25
01612 - Word Processor II		13.75
01613 - Word Processor III		15.38
05000 - Automotive Services Occupations		
05005 - Automobile Body Repairer, Fiberglass		13.34
05010 - Automotive Electrician		13.06
05040 - Automotive Glass Installer		12.10
05070 - Automotive Worker		12.10
05110 - Mobile Equipment Servicer		8.59
05130 - Motor Equipment Metal Mechanic		13.06
05160 - Motor Equipment Metal Worker		12.10
05190 - Motor Vehicle Mechanic		13.06
05220 - Motor Vehicle Mechanic Helper		10.12
05250 - Motor Vehicle Upholstery Worker		12.10
05280 - Motor Vehicle Wrecker		12.10
05310 - Painter, Automotive		12.37
05340 - Radiator Repair Specialist		12.10
05370 - Tire Repairer		7.81
05400 - Transmission Repair Specialist		12.10
07000 - Food Preparation And Service Occupations		
07010 - Baker		10.47
07041 - Cook I		9.54
07042 - Cook II		11.78
07070 - Dishwasher		7.25
07130 - Food Service Worker		7.78
07210 - Meat Cutter		11.86
07260 - Waiter/Waitress		7.59
09000 - Furniture Maintenance And Repair Occupations		

EXHIBIT A