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Counsel for *Guam Visitors Bureau*

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
GOVERNMENT OF GUAM

IN THE APPEAL OF : PACIFIC DATA SYSTEMS, INC. Appellant.	CASE NO: OPA-PA 14-003 **REPLY TO OPPOSITION TO GVB'S MOTION TO DISMISS**

Appellant Pacific Data System, Inc. ("PDS") contends that the basis for its protest is Guam Visitor Bureau's ("GVB") alleged failure to comply with 2 GAR § 3109(m)(3); that GVB should have confirmed the G4S bid since it was much lower than the PDS bid.[1] Clearly, the facts alleged to support PDS' protest are the disparity of prices of items offered to GVB. A "protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know **of the facts giving rise thereto.**" 5 GCA § 5425(a) (Emphasis added).

As detailed in GVB's Motion to Dismiss filed May 13, 2014, PDS knew of the facts giving rise to its protest – the disparity of prices offered to the GVB – on February 27, 2014, when PDS received a Notice of Non-Selection and copies of the bid abstract for review. At the very latest, said facts were known to PDS on March 5, 2014, after the meeting held between the GVB and PDS wherein the parties discussed PDS' concerns regarding the disparity of prices of items offered to the GVB. In its subsequent letter to PDS, GVB confirmed that PDS examined the bid cost summary in this solicitation.

[1] GVB responded to this argument and detailed its evaluation of both G4S and PDS bids in its Agency Statement filed May 1, 2014.

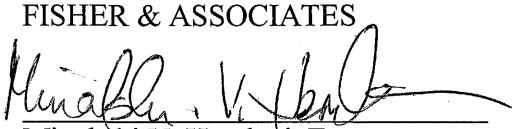
A true and correct copy of GVB's letter to PDS dated March 6, 2014 is attached hereto as Exhibit A ("Having examined a bid cost summary in this solicitation, you noted a great difference in bid amounts between Pacific Date Systems and another bidder.").

PDS argues that its protest was timely because it did not know until GVB responded to its Freedom of Information Act request, that GVB did not request bid confirmation from G4S. This argument is without merit. PDS knew at the meeting held March 5, 2014, that GVB had no intention of confirming the G4S bid. *See Exhibit A.* ("The Guam Visitors Bureau assumes that all bidders have read the solicitation carefully and responded according to its terms and calls...[w]e do not know if the tendered bid would result in a loss to that other bidder and assume all bidders used their best business judgment in responding to the solicitation...[w]e've noted the difference, but have found all bidders in Phase 2 to be responsive to the Bureau's needs.")

Therefore, at the very latest, any written protest should have been submitted to the GVB within 14 days of the March 5 meeting, or by March 19, 2014. However, PDS did not submit its bid protest until March 24, 2014 – approximately 19 days after it knew of the facts giving rise to its protest. Pursuant to 26 GAR §§ 16901(c)(1), protests filed after the fourteen (14) day period after the protestor knows of should have known of the facts giving rise to the protest shall not be considered. Based on the foregoing, PDS' protest is untimely and should be dismissed.

Submitted this 21st day of May, 2014.

FISHER & ASSOCIATES



Minakshi V. Hemlani, Esq.
Counsel for GVB

EXHIBIT A

GUAM VISITORS BUREAU
SETBISION BISITAN GUAHAN

March 6, 2014

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

RE: Multi Step Procurement No. GVB 2014-002MS , A Closed Circuit Television Surveillance System at Tumon and Hagatna Bay, Guam

Håfa Adai Mr. Day,

In our meeting on 05 March 2014, you raised to us several concerns. We address these concerns as best as we can and within the constraints of procurement law and regulation.

Having examined a bid cost summary in this solicitation, you noted great differences in bid amounts between Pacific Data Systems and another bidder. Particularly, and as to Task 1, you asked whether the other bidder presented a quotation based upon an assessment of the existing closed circuit television system or replacement of that system. The Guam Visitors Bureau assumes that all bidders have read the solicitation carefully and responded according to its terms and call. *See pp. 51-52, Multi Step Procurement No. GVB 2014-002MS.*

You stated that the other bidder offered a bid amount as to Task IV that would result in a loss to that company. We do not know if the tendered bid would result in a loss to that other bidder and assume all bidders used their best business judgment in responding to the solicitation. In this solicitation, the Bureau seeks the lowest price from a responsible, responsive bidder.

You also stated that there was great disparity in the prices of items offered to the Bureau. We've noted the difference, but have found all bidders in Phase 2 to be responsive to the Bureau's needs.

Thank you for your interest in this solicitation and hope you will participate in future Bureau procurements as appropriate.

Senseramente',

JON NATHAN P. DENIGHT
Acting General Manager

PDS
Pacific Data Systems
RECEIVED
DATE: 3/6/14
TIME: 4:13 PM
REP: AMARANTH ALMONTE