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BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY GOVERNMENT OF GUAM

IN THE APPEAL OF :

PACIFIC DATA SYSTEMS, INC.

Appellant.

CASE NO: OPA-PA 14-003

OPPOSITION TO MOTION TO COMPEL PRODUCTION OF THE COMPLETE PROCUREMENT RECORD

COMES NOW Guam Visitors Bureau ("GVB"), by and through undersigned counsel of record, and submits its Opposition to Appellant PDS' Motion to Compel Production of the Complete Procurement Record.

1. GVB complied with 2 GAR § 3129(1) and provided all records of meetings related to the procurement. PDS assumes that the procurement record should include meetings that took place prior to the issuance of Multi-Step Bid No. GVB-2014-002MS. The GVB does not agree. Moreover, there are no documented records of meetings held prior to the publication of the solicitation; although, there were two (2) meetings held to discuss development of the IFB specifications. *See Declaration of Antonio Muna, Jr. dated May 19, 2014.*

2. GVB complied with 2 GAR § 3129(2) and provided records of all communications related to the procurement. PDS again assumes that the procurement record should include communications that took place prior to the issuance of Multi-Step Bid No. GVB-2014-002MS. The GVB does not agree. Title 2 GAR § 3129 states in relevant part, "...The record shall include the following...(2) a log of all communications between government employees and any member of the public, **potential bidder**, vendor or manufacturer which is in any way related to the procurement..." 2 GAR § 3129(2)

(Emphasis added). The statute contemplates communications with potential bidders as part of the procurement record. There were no communications with potential bidders prior to the issuance of the solicitation.

3. GVB did not utilize brochures or other submittals in developing the IFB specifications. At the Pre-Hearing Conference held May 13, 2014, Jon Nathan Denight, GVB Deputy General Manager, explained that GVB discussed the specifications needed for upgrades and/or additional CCTV infrastructure with Jeffrey Muth, then DFS Security Manager, because Mr. Muth was responsible for original installation of the cameras by DFS and was familiar with the system requirements. *See Declaration of Antonio Muna, Jr. dated May 19, 2014.*

4. PDS contends that 2 GAR § 3130 requires certification of the procurement record. In fact, section 3130 states that "[n]o procurement award shall be made unless the Chief Procurement Officer, the Director of Public Works or the head of a Purchasing Agency certifies in writing under penalty of perjury that he has maintained the record required by §3129..." 2 GAR § 3130. A formal award has not yet been issued by GVB in this matter. Therefore, certification is not yet required.

Based on the foregoing, GVB provided the complete procurement record pursuant to 5 GCA § 5249 and 2 GAR § 3129, and the motion to compel should be denied.

Submitted this 19th day of May, 2014.

FISHER & ASSOCIATES

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Counsel for GVB