



Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

PART I - To be completed by OPA

In the Appeal of)
) **NOTICE OF APPEAL**
)
Pacific Data Systems, Inc (PDS))
(Name of Company), APPELLANT) Docket No. OPA-PA _____
)
)
_____)

PART II - Appellant Information

Name: Pacific Data Systems, Inc (PDS)
Mailing Address: 185 Ilipog Drive, Suite 204A
Tamuning, GU 96913
Business Address: same as above
Email Address: John@pdsguam.com
Daytime Contact No: 671-300-0202
Fax No.: 671-300-0265

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: October 5, 2015
TIME: 3:40 AM PM BY: AL
FILE NO OPA-PA: 15-012

PART III - Appeal Information

- A) Purchasing Agency: General Services Agency (GSA)
- B) Identification/Number of Procurement, Solicitation, or Contract: IFB Bid GSA-080-15
- C) Decision being appealed was made on 09-18-2015 (date) by:
 GSA Chief Procurement Officer Director of Public Works Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

- D) Appeal is made from: (Please select one and attach a copy of the Decision to this form)
 Decision on Protest of Method, Solicitation or Award
 Decision on Debarment or Suspension
 Decision on Contract or Breach of Contract Controversy
(Excluding claims of money owed to or by the government)
 Determination on Award not Stayed Pending Protest or Appeal
(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

- E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:
- **G4S Security Inc.**



Appendix A: Notice of Appeal Form PROCUREMENT APPEAL

PART IV - Form and Filing

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;

This is a Procurement Appeal made under Guam Administrative Rules and Regulations, Chapter 12 §12201 by Pacific Data Systems (PDS) regarding a timely Protest made by PDS of a Notice of Intent to Award decision made by the General Services Agency (GSA) in the above referenced procurement. The original protest by PDS in this Appeal was made on September 17, 2015 (see Exhibit 1). This appeal is made due to a failure by GSA to evaluate the issues contained in the PDS Protest, instead GSA erroneously denied the PDS Protest without an evaluation and determination of the issues defined by PDS. The reasons used by GSA to justify its denial of the PDS protest conflict Guam Procurement Law and Regulation and with prior GSA decisions. This reckless GSA decision sets a new and dangerous precedent that must now be resolved by the OPA in order to prevent future procurement controversies over this issue.

On September 18, 2015, GSA denied the PDS Protest filed on September 17, 2015, as untimely (see Exhibit 2) stating that PDS should have made its protest of deficiencies in the G4S bid at the time that PDS became aware of these issues in July after a Freedom of Information Act request made by PDS and PDS was provided with a copy of the G4S bid by GSA.

GSA's decision regarding the PDS Protest ignores the fact that PDS was not protesting the deficiencies of the G4S bid, but the GSA evaluation and award decision revealed for the first time to PDS in the GSA Notice of Intent to Award decision sent to PDS by GSA on September 3, 2015. The PDS Protest clearly states the basis of the Protest is the Notice of Intent to Award decision by GSA. Since the PDS Protest was made within 14 days of the time PDS became aware of the GSA decision and Notice of Intent to Award, the PDS Protest was timely and the issues defined in the PDS Protest must be evaluated by GSA with a proper determination made.

Instead of making a proper evaluation and determination of PDS's protest as required by Guam Procurement Law (reference 5 GCA § 5425(b)), GSA instead denied the protest as untimely for the unjustifiable reasons stated in its Protest Decision (see Exhibit 2). It is important to note that not only does GSA's decision in this protest contradict law and regulations, it also contradicts previous decisions made by GSA regarding similar procurement protests made related to protests made specific to deficiencies of a bidder's submission revealed at the time of the public bid opening. For example, on December 23, 2011, PDS made a protest in GSA IFB-064-11 regarding deficiencies in a bidder's submission observed by PDS at the public bid opening. PDS submitted a timely protest to GSA defining these deficiencies (see Exhibit 3) and on January 9, 2012, GSA denied the PDS protest as premature stating as follows:

"The issue raised in your protest is whether the failure of a particular bidder (GTA) to file a proper Major Shareholder Disclosure constitutes an automatic rejection of the bid. To file a protest, 2 GARR, Division 4 Section 9101(c)(2) states:

Subject of Protest: Protestors may file a protest on any phase of solicitation or award including, but not limited to specifications, preparations, bid solicitation, award or disclosure of information marked confidential in the bid or offer.



Appendix A: Notice of Appeal Form PROCUREMENT APPEAL

*The protest is not of any action of the General Services' Agency, but rather is the action of a bidder's submission. **At the moment, General Services Agency has not taken any action on whether to approve or disapprove the submission of the Major Shareholder Disclosure or determine whether the bidder is responsive. As such, the request for protest is premature and is denied.** The General Services Agency will keep in mind the issue raised by the protestor when determining the responsiveness of all prospective bidders." (emphasis added)*

Now in this procurement, GSA has taken a completely different position that is contrary to the previous determination made by GSA in the above referenced procurement protest. Failure by GSA to follow procurement law and past precedent is evidence of GSA violation of its good faith obligations under 5 G.C.A. §5003 and threatens the integrity of the procurement process.

The GSA decision made in this PDS Protest is reckless and without foundation in law or regulation and sets a hazardous precedent that will create many future procurement controversies. The GSA protest decision denying the PDS Protest as untimely translates into placing a burden on bidders to protest any and all procurement issues within 14 days of a bid opening or otherwise risk these issues being dismissed as untimely if raised at a later date in the procurement process (for example after an award decision by the procurement Agency).

On one hand, GSA got it right in its protest decision of January 9, 2012, but then got it wrong in the decision issued in this protest on September 18, 2015.

PDS now makes this appeal to the Public Auditor in an effort to have the OPA resolve this situation by either overturning the GSA protest denial and remanding the protest issues defined by PDS back to GSA for a proper review and determination or a de novo review by the OPA of the PDS Protest issues with the OPA making a determination regarding these issues in this procurement.

2. A statement specifying the ruling requested;

PDS requests that the OPA resolve this situation by either overturning the GSA protest denial and remanding the protest issues defined by PDS back to GSA for a proper review and determination or that the OPA undertake a de novo review of the PDS Protest with the OPA making a determination regarding these issues in this procurement.

3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

Exhibit 1: PDS Protest of GSA Notice of Intent to Award Decision filed on 09/17/2015

Exhibit 2: GSA Protest Decision sent to PDS on 09/18/2015

Exhibit 3: PDS Protest in GSA-IFB-064-11 made on 12/23/2011

Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.



Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

PART V - Declaration Regarding Court Action

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 5th day of October, 2015.

By: _____

APPELLANT - John Day

Authorized Representative of Pacific Data Systems



Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

Exhibit 1

**Protest of GSA Notice of Intent to Award Decision filed on
09/17/2015**



September 17, 2015

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

VIA HAND DELIVERY
RECEIVED
2015 SEP 17 PM 2:35
GOVT OF GUAM
G.S.A.
R

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.

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 light blue horizontal line.

John Day
President

Attachments: As stated.



Exhibit A

GSA Notice of Intent to Award sent to PDS by GSA
on September 3, 2015

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

Claudia S. Acfalle
CLAUDIA S. ACFALLE
Chief Procurement Officer



Exhibit B

Page 22 of 30 of the bid, the Bid General Terms and Conditions #4

**GOVERNMENT OF GUAM
GENERAL TERMS AND CONDITIONS**

SEALED BID SOLICITATION AND AWARD

Only those Boxes checked below are applicable to this bid.

- [X] 1. **AUTHORITY:** This solicitation is issued subject to all the provision of the Guam Procurement Act (5GCA, Chapter 5) and the Guam Procurement Regulations (copies of both are available at the Office of the Complier of laws, Department of Law, copies available for inspection at General Services Agency). It requires all parties involved in the Preparation, negotiation, performance, or administration of contracts to act in good faith.
- [X] 2. **GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and conditions for the bidder to provide the Government of Guam (Government) with specified services or with materials, supplies or equipment completely assembled and ready for use.
- [X] 3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
- [X] 4. **LICENSING:** Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
- [X] 5. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations.
- [X] 6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:**
Bidders shall comply with all specifications and other requirements of the Solicitation.
- [] 7. **"ALL OR NONE" BIDS:** NOTE: By checking this item, the Government is requesting all of the bid items to be bided or none at all.
- [X] 8. **INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices in his bid were derived at without collusion, and acknowledge that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 5651 of that of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 5651 of the Government code.
- [X] 9. **BIDDER'S PRICE:** The Government will consider not more than two (2) (Basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
- [X] 10. **BID ENVELOPE:** Envelope shall be sealed and marked with the bidder's name, Bid number, time, date and place of Bid Opening.
- [X] 11. **BID GUARANTEE REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by the Government pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier's Check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Treasury of Guam in the amount of fifteen percent (15%) of his highest total bid offer. The Bid Bond must be submitted on Government Standard Form BB-1 (copy enclosed). Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the bid or fails to enter into contract within the prescribed time, such Bid guarantee will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier's check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid. Pursuant to 5 GCA § 5212, all competitive sealed bidding for the procurement of supplies or services exceeding \$25,000.00 a 15% Bid Security of the total bid price must accompany the bid package. The bid bond, Letter of Credit, Certified Check or Cashier's Check will serve as Bid Security for this procurement.
- [X] 12. **PERFORMANCE GUARANTEE:** Bidders who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government of Guam. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Section 40 of these General Terms and Conditions.
- [X] 13. **SURETY BONDS:** Bid and Bid Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The surety must be an Insurance Company, authorized by the government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.
- [X] 14. **COMPETENCY OF BIDDERS:** Bids will be considered only from the such bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.
- [X] 15. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The Chief Procurement Officer reserves the right for securing from bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions.
(2 GAR, Div. 4 § 3116)



Exhibit C

Reference Bid Amendment 3 at page 1

Eddie Baza Calvo
Governor



Anthony C. Blaz
Director, Dept. of Admin.

GENERAL SERVICES AGENCY
Government of Guam
148 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/NETWORKS
"OPTICAL FIBER SOLUTIONS"

AMENDMENT #3

- 1. Amend to change on page 29 of 30 "SPECIFICATIONS" under **Optical Fiber Cabling** the following:

From:

- Fiber must be conduits and be buried with a minimum depth of 24 inches or greater.

To Now Read:

- Fiber must be direct buried cable (Armored) with a minimum depth of 24 inches or greater

- 2. Amend to change on page 30 of 30 "SPECIFICATIONS" under **Testing & Certification of Fiber Optic Cabling and Links** the following:

From:

Vendor must have over **15 years** of experience with this type of service and a proven track record with favorable completions (Meeting service deployment and installation Deadlines).

To Now Read:

Vendor must have over **10 years** of experience with this type of service and a proven track record with favorable completions (Meeting service deployment and installation Deadlines).

All others remains unchanged.

Please Print

ACKNOWLEDGEMENT COPY (Re-fax to GSA)

Received BY: J. Chong

Date: 7/9/15

Vendor Name: Pacific Data Systems

Fax #: 475-1727

CLAUDIA S. ACFALLE
Chief Procurement Officer



Exhibit D

Question submitted by PDS

Eddie Baza Calvo
Governor



Anthony C. Blaz
Director, Dept. of Admin.

GENERAL SERVICES AGENCY
Government of Guam
48 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: J. Chong

Date: 7/9/15

Vendor Name: Pacific Data Systems

Fax #: 475-1727



Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

Exhibit 2

GSA Protest Decision sent to PDS on 09/18/2015

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)

Department of Administration

148 Route 1 Marine Corps Drive, Piti, Guam 96915

Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

Ray Tenorio
Lieutenant Governor

Anthony C. Blaz
Director

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. 080-14

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

Please Print

ACKNOWLEDGEMENT COPY (Re-fax to GSA)

Received BY:

Date: 9/18/15

Vendor Name: Pacific Data Systems

Fax #: 475-1727

Message Confirmation Report

18-SEP-2015 16:11 FRI

WorkCentre M20 Series
Machine ID : Pacific Data Systems
Serial Number : RYU412612
Fax Number : 6713000265

Name/Number : 94751727
Page : 1
Start Time : 18-SEP-2015 16:10 FRI
Elapsed Time : 00' 28"
Mode : STD G3
Results : O.K

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensjon Setbiston Hinlrat)
Department of Administration

Ray Tenorio
Lieutenant Governor

Anthony C. Biaz
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. 080-14

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 GSA 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

Please Print
ACKNOWLEDGEMENT COPY (Re: Fax to GSA)
Received BY:
Date: 9/18/15
Vendor Name: Pacific Data Systems
Fax #: 475-1727



Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

Exhibit 3

PDS Protest in GSA-IFB-064-11 made on 12/23/2011

**BERMAN
O'CONNOR &
MANN**

Attorneys at Law

Suite 503, Bank of Guam Building
111 Chalan Santo Papa
Hagåtña, Guam 96910
Tele. 671-477-2778
Fax 671-477-4366
Website: www.pacific-lawyers.com
Email: brmann@pacific-lawyers.com

December 23, 2011

VIA HAND DELIVERY

Ms. Claudia Acfalle
Chief Procurement Officer
General Services Agency
148 Route 1 Marine Corps Drive
Piti, Guam 96915

Matt C.
RECEIVED
DEC 23 11 3:54

Re: Protest by Pacific Data Systems, Inc. to Bid Submitted by
Teleguam Holdings, LLC in GSA-064-11

Dear Ms. Acfalle:

This is a protest by Pacific Data Systems, Inc. ("PDS") to the bid submitted by Teleguam Holdings, LLC ("Teleguam") in procurement GSA-064-11. This office represents PDS. This protest is based upon the following grounds:

I. TELEGUAM'S AFFIDAVIT DISCLOSING OWNERSHIP
AND COMMISSION VIOLATES 5 G.C.A. § 5233.

The Teleguam bid must be rejected as a result of its failure to comply with 5 G.C.A. § 5233. That statute provides in relevant part:

As a condition of bidding, any partnership, sole proprietorship or corporation doing business with the government of Guam shall submit an affidavit executed

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under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have held by each such person during the twelve (12) month period ... (emphasis added).

Attached to this Protest as Exhibit "1" is the Affidavit Disclosing Ownership and Commission submitted by Teleguam. The Affidavit states that Teleguam is owned 100% by AP Teleguam Holdings, Inc. However, the Affidavit omits any reference to the previous owner of Teleguam, namely Shamrock Teleguam Holdings, LLC. This previous ownership is demonstrated by Exhibit "2" to this Protest, which is an Affidavit submitted in connection with another procurement by Teleguam, namely GDOE IFB 020-2011. That Affidavit was signed on March 15, 2011, and Shamrock Teleguam Holdings, LLC was stated to own an 89% interest in Teleguam. Since this previous ownership occurred within the twelve month period preceding the submission of Teleguam's bid in this procurement, Teleguam's Affidavit is in violation of this statute.

The consequence of a violation of 5 G.C.A. § 5233 is that the bid must be summarily rejected. This results from the statutory requirement that the disclosure of major shareholders must be made "As a condition of bidding ..." This is not the first time Teleguam has failed to comply with this statute. Attached to this Protest as Exhibit "3" is the Decision of the Public Auditor in appeal OPA-PA-10-005. In that case, Teleguam had bid on a Guam Community College telecommunications procurement. In its Major Shareholders Disclosure Affidavit, Teleguam Holdings, LLC stated that it was owned 100% by Teleguam Holdings, LLC, in effect that it owned itself. PDS protested to GCC, but GCC denied the protest on the grounds that the Affidavit related to the bidder's responsibility and not responsiveness to the bid. GCC allowed Teleguam to correct the Affidavit after bid opening. The corrected Affidavit revealed that Teleguam was owned 60% by Shamrock Capital Advisors and 29% by GE Asset Management, Inc.

PDS appealed GCC's rejection of its protest. The Public Auditor found that the Affidavit submitted by Teleguam with its bid was false since it failed to list the names of entities that held more than 10% of its stock. Importantly, the Public Auditor found that Teleguam's bid was non-responsive since 5 G.C.A. § 5233 requires the Affidavit as a "condition of bidding", and could not be corrected after bid opening. The Public Auditor found that the public interest is best served by "... strict enforcement of the requirement for submission of Major Shareholders Disclosure Affidavit which must be

complied with correctly at the time of bid submission." Decision at p. 19. The Public Auditor ruled that the award of the contract by GCC to Teleguam was void.

This Decision is directly applicable here, since Teleguam has once again failed to provide an accurate Major Shareholders Disclosure Affidavit. Its bid is therefore non-responsive and must be summarily rejected in its entirety.

II. TELEGUAM FAILED TO MEET THE REQUIREMENTS OF THE IFB BY IMPROPERLY CONDITIONING ITS BID.

Teleguam included with its bid submission additional Terms and Conditions, attached as Exhibit "4", which improperly conditions its bid. These additional conditions conflict with multiple requirements of the IFB and/or Guam law. Attached as Exhibit "5" are specific examples of Teleguam's improper conditions.

Teleguam's conditions limit its obligations or add new terms not included in the IFB. For example, Teleguam claims the right to impose Early Termination Fees despite the fact that the Bid Form specifically mandates that the Government may terminate the service with no liability. Teleguam also disclaims any warranties, and provides that services are provided "as is". However, the IFB requires that all services shall have a 99.999% up time, and that failure to meet that standard shall result in liquidated damages. Teleguam also reserves the right to require a security deposit or advance payment, despite the prohibition in Guam law against advance payments. See 5 G.C.A. § 5007.

Teleguam's conditions render its bid non-responsive under 5 G.C.A. § 5201(G), which defines a "responsive bidder" as "... a person who has submitted a bid which conforms in all material respects to the Invitation for Bids." Teleguam's Terms and Conditions materially altered its obligations as clearly demonstrated by Exhibit "5". Its bid must therefore be summarily rejected in its entirety.

III. THE JOINT BID SUBMISSION BY TELEGUAM HOLDINGS LLC, GTA TELECOM LLC, GTA SERVICES LLC AND PULSE MOBILE LLC WAS IMPROPER AND MUST BE REJECTED.

Teleguam's bid was submitted on behalf of "Teleguam Holdings LLC and its wholly owned subsidiaries GTA Telecom LLC, GTA Services LLC, and Pulse Mobile LLC". This is an invalid submission. Although Teleguam states that the three LLCs are

wholly owned by it, they are still separate legal entities as demonstrated by the fact that Teleguam's bid included separate business licenses for each of these three LLC entities. See Exhibits 6, 7 and 8. Although Teleguam submitted various other business licenses in its bid package, they all expired on June 30, 2011.

The submission of a joint bid by separate legal entities violates multiple requirements in the IFB. For example, on page 1 of Teleguam's bid submission, it is stated that the bidder is incorporated in Delaware. Which bidder? That information is not disclosed. John J. Kim signed the bid in his capacity as "Vice-President, Controller, Authorized Officer", but of which entity?

Fundamentally, the Government has a right to know with whom it is doing business. In Teleguam's bid, it is unclear to which entity the Government would issue a Purchase Order. Even the Teleguam Bid Forms do not clearly identify who the bidder is for each of the parts of the IFB. The IFB clearly does not envision that separate legal entities may submit a joint bid. The fact that the three LLCs may be wholly-owned by Teleguam does not change the fact that they are separate legal entities bidding on separate parts of the IFB. Teleguam's bid should therefore be rejected in its entirety.

IV. TELEGUAM HAS FAILED TO SPECIFY THE SPIN NUMBER OF THE ENTITY THAT IS INTENDED TO PROVIDE A SPECIFIC SERVICE.

Bid form O at p. 3 requires that "SPIN and SPAC - Service Provider Identification Number (SPIN) and Service Provider Annual Certification (SPAC). A SPIN is required." At the top right of each Bid Form, Teleguam did identify SPIN numbers as follows: "USAC SPIN: 143002715 (GTA Telecom LLC) and/or 143016481 (Pulse Mobile LLC)". Teleguam used the same designation on subsequent Bid Forms where it bids specific prices for specific services. However, there is no way the Government can determine which entity is providing which service. It should be noted there are three possible service providers, GTA Telecom LLC, Pulse Mobile LLC, or both. No SPIN number at all is stated for Teleguam Holdings LLC or GTA Services LLC, even though they are bidders.

The failure of Teleguam to identify which entity will provide what service is a serious problem. For example, in 2007, Teleguam Holdings LLC was awarded the procurement in GSA-032-07, which was for certain telecommunication services for the Government of Guam. Although the bid was solely in the name of Teleguam Holdings LLC, the only SPIN number Teleguam provided in its bid was for GTA Telecom LLC, which led the Government to believe that it was GTA Telecom LLC that was providing

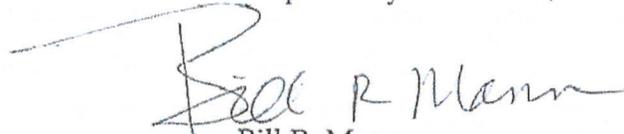
the services. Later, in Public Utilities Commission Docket 11-06, the Bureau of Information Technology ("BIT") raised the issue of whether GTA Telecom LLC had a tariff which allowed it to provide the services. In response, GTA Telecom LLC took the position that the services were actually being provided by GTA Services, LLC, which was not required to have a tariff. PDS need not get into the merits of that dispute, which is still pending with the PUC. The point is simply that Teleguam's ambiguous designation of the entity that will be providing service, without connecting a particular entity to a particular service, allows it to play a shell game. Once again, the Government has a right to know with whom it is doing business, namely which entity is providing which service. It is only if the Government knows this that the Government can determine whether the entity actually providing the service is properly licensed to do so. Teleguam's failure to disclose this basic information is fundamental, and its bid should be rejected in its entirety.

V. TELEGUAM FAILED TO SUBMIT A CERTIFICATE OF AUTHORITY.

Guam law requires that any person or entity that provides or resells telecommunications services in Guam must obtain a Certificate of Authority issued by the Guam Public Utilities Commission. See 12 G.C.A. § 12103. Bid Form O at page 1 contains a similar requirement. As part of its bid package, Teleguam did submit a Certificate of Authority dated February 28, 2005 which was issued by the Guam Public Utilities Commission to TeleGuam Holdings, LLC. However, by Order of the Guam Public Utilities Commission dated July 27, 2005, this Certificate of Authority was transferred from TeleGuam Holdings, LLC to GTA Telecom, LLC. See Exhibit "9" attached to this Protest. As a result, no valid PUC Certificate of Authority was provided for the Teleguam bid, and the bid must be rejected for failure to comply with the requirement that the bidder submit evidence that it is qualified to bid.

For any or all of the above reasons, the bid submitted by Teleguam should be rejected in its entirety.

Respectfully submitted,


Bill R. Mann

Attachments: As stated.