



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF

Docket No. OPA-PA 15-012

PACIFIC DATA SYSTEMS, INC. (PDS),
Appellant,

DECISION

vs.

GENERAL SERVICES AGENCY,
Purchasing Agency.

I. INTRODUCTION

This is the Decision of the Public Auditor for an appeal filed on October 5, 2015 by Guam Pacific Data Systems, Inc. ("PDS"). The appeal is made from a decision on protest of method, solicitation or award by General Services Agency, Government of Guam ("GSA") to G4S Security Systems (Guam) Inc. ("G4S"). PDS raises the following grounds on appeal:

1. GSA's denial of PDS's Protest as untimely was in error;
2. The G4S bid must be rejected as non-responsive because G4S failed to submit a valid contractor's license required to meet the bid terms and conditions of Guam law for the type of work defined in this procurement;
3. The G4S bid must be rejected as non-responsive because G4S failed to meet the bidder qualification requirements of 10 years of experience regarding Fiber Optic Outside Plant ("OSP") telecommunications facilities construction projects.

1 On November 6, 2015, GSA filed a Motion to Dismiss which was taken under advisement. A
2 hearing on the appeal was held on December 14, 2015 before Doris Flores Brooks, CPA, CGFM,
3 Public Auditor and Peter C. Perez, Esq., Hearing Officer. Bill Mann, Esq. appeared on behalf of
4 and along with PDS President John Day. Assistant Attorney General Robert M. Weinberg
5 appeared on behalf of GSA.
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7 **II. FINDINGS OF FACT**

8 The Public Auditor issues this Decision based upon the procurement record, the documents
9 submitted by the parties, and the testimony, evidence, and arguments presented at the appeal
10 hearing, and makes the following findings of fact:
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- 12 1. On June 24, 2015 GSA issued Invitation for Bid No. GSA-080-15 (“IFB”) for interested
13 parties to submit bids for the procurement of Telecommunication/Networks “Optical Fiber
14 Solutions” for the Office of Homeland Security. [Agency Procurement Record (APR),
15 IFB, Tab 5, page 3].
- 16 2. The Office of Homeland Security prepared the Bid Specifications. [APR IFB, Tab 5
17 Specifications, page 30]
- 18 3. The IFB Specifications required bidders *inter alia* to install twelve (12) stands single
19 mode outside plan fiber continuous from Judiciary of Guam MIS Computer Room to
20 Guam Homeland Security Office TELECON Room. [APR IFB, Tab 5 Specifications,
21 page 29]
- 22 4. The IFB provided:
 - 23 • Bidders are cautioned that the Government will not consider for award any offer
24 submitted by a bidder who has not complied with the Guam Licensing Law. [APR
25 IFB, Tab 5, General Terms and Conditions (GTC), No. 4, page 22]

- 1 • Bidders shall comply with all specifications and other requirements of the Solicitation.
2 [APR IFB, Tab 5, GTC, No. 6, page 22]
- 3 • Bids will be considered only from such bidders who, in the opinion of the
4 Government, can show evidence of their ability, experience, equipment and facilities
5 to render satisfactory service. [APR IFB, Tab 5, GTC, No. 14, page 22]
- 6 • In determining the lowest responsible offer, the Chief Procurement Officer shall be
7 guided by the following: (a) Price of items offered; (b) The ability, capacity, and skill
8 of the Bidder to perform... [APR IFB, Tab 5, GTC, No. 16, page 23]
- 9 • Award shall be made to the lowest responsible and responsive bidder, whose bid is
10 determined to be the most advantageous to the Government, taking into consideration
11 the evaluation factors set forth in the solicitation. [APR IFB, Tab 5, GTC, No. 22,
12 page 23]
- 13 5. On July 9, 2015, GSA issued IFB Amendment #3 which provided “Vendor must have
14 over 10 years of experience with this type of service and a proven track record with
15 favorable completions (Meeting service deployment and installation Deadlines).” [APR
16 Tab 7]
- 17 6. The IFB did not require Bidders to submit proof of licensure contemporaneously with
18 their Bids.
- 19 7. G4S had a contractor’s license material to the procurement: Certificate # C-0615-0592, for
20 contractor classifications B, C11, C13, C13A, C14, C15, C17, C19, C20 and C68; issued
21 June 23, 2015; and expiring June 30, 2016. [APR Tab 4]
- 22 8. G4S’s Bid contained a Statement of Qualifications. [APR Tab 4]
- 23 9. On August 3, 2015, the Office of Homeland Security advised GSA that G4S’s Bid
24 complied with all IFB specifications. [APR Tab 10]
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1 10. On August 31, 2015, GSA issued an Analysis identifying PDS's Bid at \$155,800.00 and
2 G4S's Bid at \$118,941.85. The analysis recommended that the bid be awarded to G4S in
3 the amount of \$118,941.85 for being the lowest most responsive and responsible bidder.
4 [APR Tab 10]

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6 11. On August 31, 2015, GSA issued a Bid Status advising PDS that its Bid was rejected due
7 to "High price." It recommended that the award be made to G4S in the total amount of
8 \$118,941.85. [APR Tab 9]

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10 12. On September 3, 2015, PDS received the GSA Bid Status notification of its intent to
11 award the Bid to G4S. [APR Tab 1]

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13 13. On September 17, 2015, PDS filed its Protest of Notice of Intent to Award Decision G4S in
14 GSA-IFB-080-15. [APR Tab 1]

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16 14. On September 18, 2015, GSA denied PDS's Protest as untimely. [APR Tab 2]

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18 15. On October 5, 2015, PDS filed its Notice of Appeal.

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20 16. To date, no formal award has been issued by GSA in this procurement.

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22 17. At the appeal hearing, PDS witness Jeffrey Tester, PDS Manager for Outside Plant,
23 testified:

- 24 • The IFB project required Bidders to have C68 and C17 contractors' licenses;
- 25 • He has never seen G4S perform OSP work;
- 26 • He is not personally familiar with the experience qualifications of G4S employees and
27 cannot state with certainty whether G4S's employees lack the experience required by
28 the IFB;
- He is not personally familiar with G4S's projects;
- The IFB does not prohibit Bidders to subcontract work; and
- The IFB does not require that a Bidder's experience be from Guam.

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18. PDS witness John Day, PDS President, testified:

- He does not believe that G4S has the required OSP experience;
- The G4S Statement of Qualifications did not appear to state OSP experience and did not meet the 10 year OSP experience requirement;
- He did not know G4S that well, but had some awareness of G4S's experience;
- G4S is a world wide company;
- G4S's contractors' license had C68 and C17 certifications;
- The IFB did not prohibit Bidders from subcontracting work; and
- PDS subcontracted work including engineers, architects, and designers.

19. GSA witness Eric Roberto, G4S Data Comm. Manager, testified:

- G4S possesses the IFB required licenses;
- G4S has the IFB required specifications experience;
- G4S has performed the work in 120 countries and in local projects including projects for GTA and Bishop Baumgartner Memorial Catholic School; and
- G4S has used subcontractors for its projects and would be using subcontractors for this project.

III. ANALYSIS

Pursuant to 5 G.C.A. § 5703, the Public Auditor reviews GSA's denial of PDS's Protest *de novo*. In reviewing *de novo* the issues PDS raises in its Protest and in this appeal, the Public Auditor concludes as a matter of law, the following:

I. PDS's Protest was timely;

1 II. PDS failed to establish that G4S's Bid must be rejected as non-responsive for failing to
2 submit a valid contractor's license required to meet the bid terms and conditions of Guam
3 law for the type of work defined in this procurement;

4 III. PDS failed to establish that G4S's Bid must be rejected as non-responsive for failing to
5 meet the bidder qualification requirements of 10 years of experience regarding Outside
6 Plaintiff ("OSP") fiber optic construction projects.
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9 ***I. PDS's Protest was timely.***

10 On August 31, 2015, GSA issued an Analysis identifying PDS's Bid at \$155,800.00 and
11 G4S's Bid at \$118,941.85. The analysis recommended that the bid be awarded to G4S in the
12 amount of \$118,941.85 for being the lowest most responsive and responsible bidder. [APR Tab
13 10]. On August 31, 2015, GSA issued a Bid Status advising PDS that its Bid was rejected due to
14 "High price." It recommended that the award be made to G4S in the total amount of \$118,941.85.
15 [APR Tab 9]. On September 3, 2015, PDS received the GSA Bid Status notification of its intent
16 to award the Bid to G4S. [APR Tab 1]. On September 17, 2015, filed its Protest of Notice of
17 Intent to Award Decision G4S in GSA-IFB-080-15. [APR Tab 1]. PDS's Protest was based upon
18 GSA's September 3, 2015 notice of intent to PDS that GSA intended to award the Bid to G4S.
19 Prior to that notification, PDS was unaware that GSA intended to award the Bid to G4S.
20 Consequently, PDS's Protest, filed on September 17, 2015, within 14 days of the September 3,
21 2015 notification, was timely. 5 G.C.A. § 5425(a). GSA's September 18, 2015, denial of PDS's
22 Protest as untimely was in error.
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1 ***II. PDS failed to establish that G4S's Bid must be rejected as non-responsive for failing to***
2 ***submit a valid contractor's license required to meet the bid terms and conditions of Guam law***
3 ***for the type of work defined in this procurement.***

4 The IFB provided, "Bidders are cautioned that the Government will not consider for award
5 any offer submitted by a bidder who has not complied with the Guam Licensing Law. [APR IFB,
6 Tab 5, GTC, No. 4, page 22]. The IFB did not require Bidders to submit proof of licensure
7 contemporaneously with their Bids. G4S had a contractor's license material to the procurement:
8 Certificate # C-0615-0592, for contractor classifications B, C11, C13, C13A, C14, C15, C17,
9 C19, C20 and C68; issued June 23, 2015; and expiring June 30, 2016. [APR Tab 4]. PDS witness
10 Jeff Tester stated that the IFB project required Bidders to have C68 and C17 contractors' licenses.
11 G4S's contractors' license contained C68 and C17 certifications. [APR Tab 4]. PDS witness John
12 Day agreed that G4S's contractors' license contained C68 and C17 certifications. GSA witness
13 Eric Roberto, G4S Data Comm. Manager, testified that G4S's Bid complied with license
14 certification requirements and that G4S possessed the required license certifications.
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17 ***III. PDS failed to establish that G4S's Bid must be rejected as non-responsive for failing to***
18 ***meet the bidder qualification requirements of 10 years of experience regarding Outside Plaintiff***
19 ***("OSP") fiber optic construction projects.***

20 The IFB, General Terms and Conditions, Section 16, sets forth the criteria for determining the
21 most fair, reasonable, responsive and responsible bidder, which included: (a) total price of the
22 items offered; (b) the ability, capacity, and the skill of the bidder to perform; (c) whether the
23 Bidder can perform promptly or within the specified time; (d) the quality of performance of the
24 bidder with regard to awards previously made to him; (e) the previous and existing compliance by
25 the Bidder with laws and regulations relative to procurement; (f) the sufficiency of financial
26 resources and ability of the Bidder to perform; (g) the ability of the Bidder to provide future
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1 maintenance and services for the subject of the award; and (h) the compliance with all the
2 conditions to the solicitation. [APR IFB, Tab 5, page 23]

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4 In addition, Section 22 of the IFB General Terms and Conditions, states, “[a]ward shall be
5 made to the lowest responsible and responsive bidder, whose bid is determined to be the most
6 advantageous to the Government, taking into consideration the evaluation factors set forth in this
7 solicitation.” [APR IFB, Tab 5, page 23].

8 5 G.C.A. §5211. Competitive Sealed Bidding provides:

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10 (e) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally
11 accepted without alteration or correction, except as authorized in this
12 Chapter. Bids shall be evaluated based on the requirements set forth in the
13 Invitation for Bids, which may include criteria to determine acceptability
14 such as inspection, testing, quality, workmanship, delivery and suitability
15 for a particular purpose. Those criteria that will affect the bid price and be
16 considered in evaluation for award shall be objectively measurable, such as
17 discounts, transportation costs, and total or life cycle costs. The Invitation
18 for Bids shall set forth the evaluation criteria to be used. No criteria may be
19 used in bid evaluation that are not set forth in the Invitation for Bids.

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21 5 G.C.A. §5211(g) provides: “Award. The contract shall be awarded with reasonable
22 promptness by written notice to the lowest responsible bidder whose bid meets the requirements
23 and criteria set forth in the Invitation for Bids...”

24 The Office of Homeland Security prepared the Bid Specifications. [APR IFB, Tab 5
25 Specifications, page 30]. The IFB Specifications required bidders *inter alia* to install twelve (12)
26 stands single mode outside plan fiber continuous from Judiciary of Guam MIS Computer Room
27 to Guam Homeland Security Office TELECON Room. [APR IFB, Tab 5, Specifications, page
28 29]. On July 9, 2015, GSA issued IFB Amendment #3 which provided “Vendor must have over
29 10 years of experience with this type of service and a proven track record with favorable
30 completions (Meeting service deployment and installation deadlines).” [APR Tab 7].

1 On August 3, 2015, the Office of Homeland Security advised GSA that G4S's Bid complied
2 with all IFB specifications. [APR Tab 10].

3 GSA witness Eric Roberto corroborated that G4S's Bid complied with the IFB experience
4 requirement and that G4S possessed the experience required by the IFB. He testified G4S has the
5 IFB required specifications experience; G4S has performed the work in 120 countries and in local
6 projects including projects for GTA and Bishop Baumgartner Memorial Catholic School; and that
7 G4S has used subcontractors for its projects and would be using subcontractors for this project.

8 PDS's witnesses failed to establish that G4S's Bid failed to comply with the IFB experience
9 requirement. While PDS President John Day testified that he does not believe that G4S has the
10 required OSP experience and that the G4S Statement of Qualifications did not appear to state
11 required OSP experience, he did not know G4S that well but had some awareness of G4S's experience. He
12 conceded that G4S was a world wide company, that G4S's contractors' license had C68 and C17
13 certifications, that the IFB did not prohibit Bidders from subcontracting work, and that PDS itself
14 subcontracted work including engineers, architects, and designers. Similarly, PDS witness Jeff
15 Tester testified that although he has never seen G4S perform OSP work he is not personally
16 familiar with the experience qualifications of G4S employees and cannot state with certainty
17 whether G4S's employees lack the experience required by the IFB, he is not personally familiar
18 with G4S's projects, the IFB does not prohibit Bidders to subcontract work, and the IFB does not
19 require that a Bidder's experience be from Guam.
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23 **IV. CONCLUSION**

- 24 1. PDS's Protest was timely.
 - 25 2. GSA's Motion to Dismiss is DENIED.
 - 26 3. PDS's appeal is DENIED.
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1 4. The parties shall bear their respective costs and attorneys' fees.

2 This is a Final Administrative Decision. The Parties are hereby informed of their right to
3 appeal from a Decision of the Public Auditor to the Superior Court of Guam in accordance with
4 Part D of Article 9 of 5 G.C.A. §5481(a) within fourteen (14) days after receipt of a Final
5 Administrative Decision. A copy of this Decision shall be provided to the Parties and their
6 respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review
7 on the OPA website at www.opaguam.org.
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9 **DATED** this 13th day of January 2016.
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13 **DORIS FLORES BROOKS, CPA, CGFM**
14 **Public Auditor of Guam**

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