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PROCUREMENT APPEALS

DATE: 6/28/2021

TIME: 3:45  AM  PM BY: JMY

FILE NO OPA-PA: 21-001

1 **PACIFIC DATA SYSTEMS**  
185 ILIPOG DRIVE  
2 HBC BLDG SUITE 204A  
TAMUNING, GUAM 96913  
3 TELEPHONE: (671) 300-0200  
FACSIMILE: (671) 300-0265  
4

5 **BEFORE THE**  
6 **OFFICE OF PUBLIC ACCOUNTABILITY**

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IN THE PETITION OF  
PACIFIC DATA SYSTEMS,  
Appellant.

DOCKET NO: OPA-PA-21-001

**PROCUREMENT APPEAL PETITION**

MOTION TO COMPEL PRODUCTION OF  
DOCUMENTS IN GHURA IFB GHURA-  
COCC-021-003 APPEAL

**INTRODUCTION**

**Comes Now** Pacific Data Systems (PDS), through its President and Chief Operating Officer (COO), as the Appellant in the above referenced Appeal and hereby submits this motion to compel production of all documents related to the Procurement Record and Agency Report in the above referenced GHURA procurement.

**BACKGROUND**

1. On January 5, 2021, GHURA advertised an Invitation for Bid GHURA-COCC-021-003 Metrolan (the "Bid") for MetroLan Services, Internet Services and Voice Services. The contract terms were for three (3) years, with the government's option of two separate renewals of one year each. The actual bid packet was not made available to PDS until January 7, 2021.

1 2. On February 12, 2021, PDS submitted its bid proposal prior to GHURA's Bid deadline.

2  
3 3. On March 12, 2021, GHURA issued a Notice of Non-Award to Pacific Data Systems.

4  
5 4. On March 26, 2021, PDS submitted its Letter of Protest to GHURA regarding the award  
6 of the procurement to PTI Pacifica doing business as IT&E.

7  
8 5. On May 5, 2021, GHURA issues a Denial of the PDS Protest.

9  
10 6. On May 19, 2021, PDS Appealed GHURA's denial of Protest to the Office of Public  
11 Accountability (OPA).

12  
13 7. On May 20, 2021, OPA Notified GHURA of PDS Appeal Pursuant to 2 GAR, Div. 4,  
14 Ch. 12, §12104(3), and detailed the requirement for submission of one complete copy of  
15 the procurement record for the procurement solicitation above, as outlined in Title 5,  
16 Chapter 5, §5249 of the Guam Code Annotated no later than Thursday, May 27, 2021,  
17 five working days following the Notice of Receipt of Appeal. The OPA also requested one  
18 copy of the Agency Report for the procurement solicitation cited, as outlined in 2 GAR,  
19 Division 4, Chapter 12, §12105, by Friday, June 4, 2021, ten working days following  
20 receipt of the OPA notice.

21  
22 8. On May 27, 2021, GHURA provided an electronic and hard copy of the procurement  
23 record to the OPA. Electronic copy of procurement record was provided to PDS on June  
24 1, 2021.

1 9. On June 1, 2021, PDS emailed the OPA regarding the lack of any documents  
2 contained in the GHURA's procurement record submission, PDS noted that only an index  
3 of documents was provided. PDS requested the OPA to compel GHURA to produce the  
4 required documents. See attached Exhibit A.

5  
6 10. On June 2, OPA responded to PDS email by instructing GHURA "**Mr. Day is correct**  
7 **that everything should be provided to OPA, and if it hasn't been, please**  
8 **ensure the procurement record is supplemented and filed with our office.**" See  
9 attached Exhibit B for a copy of this email.

10  
11 11. On June 4, 2021, GHURA provided the OPA a hard copy of the Agency Record and  
12 provided PDS an electronic copy. The Agency report was also lacking all required  
13 documents.

14  
15 12. On June 14, 2021, GHURA provided the OPA with feedback on some of the missing  
16 information not contained in the GHURA's submission related to a Board of  
17 Commissioners meetings and other meetings with IT&E and PDS. However, GHURA did  
18 not provide the requested documents or a full disclosure of information related to the  
19 meetings with IT&E. See attached Exhibit C for a copy of this communication.

20  
21 13. As of the date of this filing, GHURA has failed to provide a copy of all required  
22 documents and information contained in the Procurement record and/or Agency Report  
23 for this procurement to the OPA, PDS, and other interested parties in this Appeal as  
24 required by the OPA.

1 **MOTION TO COMPEL**

2 PDS now files this Motion requesting that the OPA issue an order requiring that GHURA  
3 abide by the instructions contained in the OPA Notice of Appeal and produce all required  
4 documents for both the Procurement Record and Agency Report as applicable and that  
5 these documents are provided without further delay to the OPA, PDS, and any other  
6 Interested Parties involved in this appeal.

7  
8 PDS further requests that the OPA grant PDS sufficient time to review the missing  
9 Procurement Record and Agency Report documents, once received from GHURA, in  
10 order to allow PDS time to prepare additional motions or filings based on the information  
11 contained therein. PDS is very concerned that GHURA is withholding critical documents  
12 and information that will reflect negatively on the actions of GHURA personnel in this  
13 procurement.

14  
15 **RESPECTFULLY SUBMITTED** this 28th day of June 2021.

16 **PACIFIC DATA SYSTEMS**

17   
18 **JOHN DAY**  
19 *President/COO*

20 Exhibit A: PDS Email to OPA regarding GHURA Procurement Record submission

21 Exhibit B: OPA Email to GHURA regarding Procurement Records

22 Exhibit C: GHURA Email to OPA regarding Procurement Record and Agency Report

**EXHIBIT A**  
**PDS Email to OPA Regarding GHURA Procurement Record Submission**

On Tue, Jun 1, 2021 at 3:51 PM John Day <[john@pdsguam.com](mailto:john@pdsguam.com)> wrote:

Hello Jerrick,

PDS also confirms receipt of the GHURA Procurement Record submission and other documents as noted. However, after review, we request that the OPA compel GHURA to provide ALL copies of the documents/audio recordings and not just an index. Based on our past experience with OPA Appeals and examples on the OPA website of other appeal dockets, it is clear that ALL documents and materials contained in the Procurement Record should be provided to the OPA, PDS, and other applicable parties to these proceedings at this time in the Procurement Appeal process. GHURA's submission does not meet these requirements.

We request and appreciate your timely attention to this matter.

Sincerely,

John Day

Pacific Data Systems

**From:** Jerrick Hernandez [mailto:[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)]

**Sent:** Thursday, May 27, 2021 4:57 PM

**To:** Greta Balmeo <[gbalmeo@ghura.org](mailto:gbalmeo@ghura.org)>

**Cc:** Ray Topasna <[rstopasna@ghura.org](mailto:rstopasna@ghura.org)>; Elizabeth Napoli <[efnapoli@ghura.org](mailto:efnapoli@ghura.org)>; acp <[acp@perezlawguam.com](mailto:acp@perezlawguam.com)>; Julie G. Lujan <[juls@ghura.org](mailto:juls@ghura.org)>; John Day <[john@pdsguam.com](mailto:john@pdsguam.com)>

**Subject:** Re: OPA-PA-21-001 Notice of Receipt of Appeal

Hafa Adai,

OPA confirms receipt of this email and the attached procurement record and additional two documents.

Regards,

Jerrick

**EXHIBIT B**  
**OPA Email to GHURA Regarding Procurement Records**

On Wed, Jun 2, 2021 at 10:44 AM Jerrick Hernandez <[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)> wrote:  
Hafa Adai Everyone,

In my review of the procurement record filed, I did see in Tab A, the "log of communication" indicated 5 separate zoom meetings, but in Tab C, "sound recordings of all pre-bid conferences; and discussions with vendors concerning small purchase procurement", there is only one link provided for the January 13th zoom meeting. Is there a reason why links for the 4 other zoom meetings weren't provided?

Mr. Day is correct that everything should be provided to OPA, and if it hasn't been, please ensure the procurement record is supplemented and filed with our office. Thank you.

--

Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA  
Auditor  
Office of Public Accountability – Guam  
[www.opaguam.org](http://www.opaguam.org)  
Tel. (671) 475-0390 ext. 204  
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## EXHIBIT C

### GHURA Email to OPA Regarding Procurement Record and Agency Report

On Mon, Jun 14, 2021 at 4:56 PM Greta Balmeo <[gbalmeo@ghura.org](mailto:gbalmeo@ghura.org)> wrote:

Good afternoon Jerrick,

Please refer to the remarks below regarding the Zoom meetings per the Authority's procurement record that was submitted on May 27, 2021:

1. 1/13/2021 Pre-bid conference Zoom meeting: link to Zoom recording available on GHURA's website.
2. 2/24/2021 IT&E and GHURA clarification Zoom meeting: this Zoom meeting has no audio/video recording
3. 3/4/2021 GHURA Board of Commissioners meeting: a copy of the audio recording shall be submitted via CD-rom/USB drive.
4. 4/5/2021 Discussion between IT&E and GHURA Procurement and MIS & Attorney Perez: this Zoom meeting has no audio/video recording
5. 4/9/2021 Confidential negotiation meeting between GHURA Procurement, MIS, Attorney Perez & PDS: this Zoom meeting has no audio/video recording.

Kindly advise if I may be able to deliver the recording file tomorrow to the OPA office.

Thank you,  
Greta Balmeo  
671-475-1356