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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Procurement Appeal of  
  
Pacific Data Systems, Inc. (PDS),  
  
Appellant.

**DOCKET NO. OPA-PA-021-001**

**REPLY TO OPPOSITION TO MOTION  
TO COMPEL PRODUCTION OF  
DOCUMENTS IN GHURA IFB  
GHURA-COCC-021-003**

**I. INTRODUCTION**

On June 28, 2021, Appellant Pacific Data Systems (“PDS”) filed a motion seeking an Order from the Office of Public Accountability (“OPA”) Compelling procuring agency the Guam Housing and Urban Renewal Authority (“GHURA”) to provide the complete procurement record in this matter. GHURA opposed that motion on July 6, 2021, claiming that the Agency has complied with the law by providing, in GHURA’s view, what was required under 5 G.C.A. §5249. This Reply is provided to address GHURA’s error.

**II. ARGUMENT IN REPLY**

GHURA’s position is straightforward, and wrong. GHURA maintains that the Agency has completed its duty since it has provided, as the procurement record in this matter, all items listed in 5 G.C.A. §5249. To make this argument, GHURA both

ignores the non-exhaustive nature of the list, and ignores the relevant procurement regulations codified at 2 G.A.R. §12104(c)(3).

Guam law mandates that “each procurement officer shall maintain a **complete record** of each procurement.” 5 G.C.A. §5249 (emphasis added); *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5, ¶ 22 .The law does not provide an exhaustive list of that a complete record contains, but instead provides a non-exhaustive list of items that “the record shall include.” 5 GCA §5249.<sup>1</sup> GHURA also ignores Guam’s procurement regulations that direct that the Agency provide an Agency Report fully responsive to the protest appeal that is built upon a procurement record that includes “**Any other documents which are relevant to the protest**” 2 G.A.R. §12105 (emphasis added). GHURA’s myopic view of what to include in the procurement record also contradicts the broad public policy goals of keeping such a record; the Guam legislature has explained that the record should be of sufficient form so as to “(a) protect the integrity of the bidding process” 5 G.C.A. § 5252.

Here, PDS’s appeal calls into question a series of communications between GHURA and offeror PTI Pacifica Inc, dba IT&E (“IT&E”) that occurred post bid

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<sup>1</sup> The non-exhaustive list explains the record should include: “(a) the date, time, subject matter and names of participants at any meeting including government employees that is in any way related to a particular procurement; (b) 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; (c) sound recordings of all pre-bid conferences; negotiations arising from a request for proposals and discussions with vendors concerning small purchase procurement; (d) brochures and submittals of potential vendors, manufacturers or contractors, and all drafts, signed and dated by the draftsman, and other papers or materials used in the development of specifications; and (e) the requesting agency’s determination of need.”


submission. GHURA's bases for denying PDS's protest rest upon GHURA's assertion that communicating with IT&E and allowing that offeror to correct its bid in multiple respects after submission was allowed under the law. See, Notice of Appeal, Exhibit 2. As these communications are "directly relevant" to the protest, GHURA should provide them as part of the complete record of this procurement in order to be fully responsive to this appeal. More, the Agency should be made to include in the procurement record those documents that would otherwise be available through Guam's sunshine act. It strains credulity for GHURA to argue that documents are not to be included in the procurement record if those documents would be responsive under Guam's Open Government law to documents requests regarding the very same procurement.

### III. CONCLUSION

PDS respectfully requests that GHURA be directed to included in its procurement record all documents relevant to the allegations contained in this appeal, and that otherwise can shape the full record of this procurement. Its motion should be granted.

**Respectfully submitted** this 12<sup>th</sup> day of July, 2021.

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