



Jerrick Hernandez <jhernandez@guamopa.com>

In the Appeal of Pacific Data Systems; Consolidated Appeal No.'s OPA-PA-21-004 and OPA-PA-21-005

Claire Pollard <cpollard@rwtguam.com>
To: Jerrick Hernandez <jhernandez@guamopa.com>
Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>

Tue, Aug 31, 2021 at 3:38 PM

Dear Mr. Hernandez:

Please see the following attached documents to be filed in the above-referenced matter.

- *Motion to Enforce Confidentiality of Appellant's Submissions; Motion to Release GTA's Bid Documents*
- *Motion for Injunctive Relief and Stay of Procurement Pending Final Resolution of Appeal*

Should you have any questions or concerns, please feel free to contact our office. Thank you.

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Regards,
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2 attachments**8.31.21 Motion to Enforce Confidentiality of Appellants Submissions.pdf**

154K

**8.31.21 Motion for Injunctive Relief and Stay of Procurement.pdf**

354K

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**PROCUREMENT APPEAL OF DENIAL OF PROCUREMENT PROTEST
IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

PART I.

In the Appeal of

Pacific Data Systems, Inc. (PDS),

Appellant.

CONSOLIDATED APPEAL NOS:

OPA-PA-21-004

OPA-PA-21-005

**MOTION TO ENFORCE
CONFIDENTIALITY OF APPELLANT'S
SUBMISSIONS; MOTION TO RELEASE
GTA'S BID DOCUMENTS**

I. MOTION

Appellant Pacific Daily Systems, Inc. ("PDS" or "Appellant"), by Appellant's undersigned attorney, respectfully moves the Office of Public Accountability ("OPA") for an order commanding the Guam Department of Education ("GDOE" or "Procuring Agency" or "Agency") to modify the procurement record submitted to the OPA for use in the consolidated appeals of IFB 027-2021 and IFB 028-2021 (the "IFBS") so as to adhere to Guam's laws regarding confidentiality and trade secrets in bid submissions. PDS further moves the OPA for an order releasing to PDS the bid proposal of Teleguam Holdings LLC ("GTA") submitted bids in response to the GDOE Bid

invitation, as that bid proposal bears directly on the issues in this consolidated appeal.

This motion is supported by the record currently before the OPA, the appended Memorandum in Support of Motion, and any argument that the OPA may entertain on this matter.

II. MEMORANDUM IN SUPPORT OF MOTION.

A. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND.

GDOE issued the IFBS for Telecommunication Service – Plain Old Telephone Services (“POTS”) and Telecommunication Service – Digital Transmission Services (“DTS”) on April 28, 2021. On June 10, 2021, PDS timely submitted, and GDOE received, a written, agency-level protest to GDOE of the award to GTA of the potential awards. On June 30, 2021, PDS received GDOE’s denial of PDS’s protests, and in response, PDS timely filed Notice of Appeals of GDOE’s denial of PDS’s protest before the OPA on July 14, 2021. The Procurement Record and accompanying Agency Report were eventually provided, and PDS provided its Comments on those submissions on August 9, 2021.

B. DOE’S PROCUREMENT RECORD SUBMISSION VIOLATES THE LAW REGARDING CONFIDENTIALITY AND BID SUBMISSIONS.

The Procurement Records that were provided to the OPA in these consolidated matters incorrectly ignore the confidentiality designations set by PDS for its bid submissions and makes them part of the public record. Conversely, DOE has withheld from the public record GTA’s bid submission, despite the fact that the responsiveness

of that bid submission is at issue in this consolidated appeal. DOE's errors must be corrected.

Guam law makes it plain that Information in all bids is publicly available from the time the bids are opened, except for such confidential information that a bidder has designated as confidential in its bid. 2 GAR § 3109(1)(2) ("The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential...") Here, despite the fact that PDS marked portions of its bid as confidential, DOE has failed to respect that confidentiality designation and has instead made the entirety of PDS's bid public. DOE has done this without the examination required by Guam law and without informing PDS, as required by law, that its confidentiality designations would be ignored. *See*, 2 GAR § 3109 (1)(3).¹

Finally, PDS has raised in its protest questions about the proposed rates submitted to DOE by GTA, the formulation of those rates, and the ability of DOE to perform as required by the IFB. Despite this fact, DOE has failed to provide PDS with


¹ The regulation reads in its entirety:

Confidential Data. The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing what portions of the bids will be disclosed and that, unless the bidder protests under Chapter 9 (Legal and Contractual Remedies of this Guam Procurement Regulations, the bids will be so disclosed. The bids shall be opened to public inspections subject to any continuing prohibition on the confidential data.
2 GAR 3109 (1) (3).

GTA's bid submission. As a result, PDS is prejudiced in its preparation for an eventual merit hearing in this matter. To that end, PDS requests that it be provided with GTA's bid submission for GDOE IFB 027-2021 Telecommunication Service – Plain Old Telephone Services (“POTS”) and GDOE IFB 028-2021 Telecommunication Service – Digital Transmission Services (“DTS”).

Respectfully submitted this 31st day of August 2021.

RAZZANO WALSH & TORRES, P.C.

By: 

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Attorneys for Appellant
Pacific Data Systems, Inc.