




1. Letter from Sarah Strock, counsel for GCC, dated April 7, 2011, providing notice that the remaining bids by PDS and IT&E have been rejected.
2. Letter from Bill Mann, counsel for Pacific Data Systems, Inc., dated June 7, 2011, requesting a decision on PDS' April 21, 2011 protest.
3. Protest determination dated June 15, 2011, denying the protest by PDS.

Respectfully submitted this 26<sup>th</sup> day of July, 2011

**CABOT MANTANONA LLP**  
*Attorney for Guam Community College*

By:

  
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April 7, 2011

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Re: **IFB GCC-FB-015 Voice Over Internet Protocol Bid for GCC**

Dear Mr. Mann, Mr. Cook, and Mr. Carrara:

This letter is a formal notice that all bids for IFB GCC-FB-015 have been rejected because it is in the best interest of the territory. As you all know, the Public Auditor found TeleGuam Holding's bid to be unresponsive and that it should've been disqualified at the time of bid opening. In the Appeal of Pacific Data Systems, Decision, January 12, 2011. Since OPA issued that Decision, GCC reviewed the remaining bids by PDS and IT&E and has rejected both of them because rejecting these bids is in the best interest of the territory.

First, GCC has rejected the remaining bids in the IFB pursuant to 2 G.A.R. Div. 4 § 3115 (h)(A)(iv) because prices of the remaining bids exceed available funds, and it would not be appropriate to adjust quantities to come within available funds. After the Office of Public Accountability issued its Decision, GCC reviewed the remaining bids from PDS and IT&E. Both of the remaining bids' prices exceeded the available amount of ARRA funding. GCC also reviewed the bids to see if adjusting the quantities would be appropriate to come within the available funds, and determined it would not be appropriate. After determining that the remaining bids both exceeded the amount of available funding, and that modifying quantities would not be appropriate, GCC is requesting for the ARRA funds to be reprogrammed to other procurement projects that were underfunded and of higher priority to GCC. Therefore, rejecting the remaining bids in the IFB is in the best interest of the territory.

Second, GCC has rejected the remaining bids in the IFB pursuant to 2 G.A.R. Div. 4 § 3115 (d)(2)(A)(i) because the supplies and services are no longer required. GCC was informed of a new, related bid from the General Services Agency (GSA), titled "Multi-Step, Multi-Part Invitation for Bid (IFB) to establish a Price List for Telecommunication Services (PLTS) for the Government of Guam." After receiving notice from GSA of this new IFB, GCC determined that IFB GCC-FB-015 is now unnecessary and redundant. Therefore, rejecting the remaining bids in the IFB is in the best interest of the territory.

Third, GCC has rejected the remaining bids in the IFB pursuant to 2 G.A.R. Div. 4 § 3115 (d)(2)(A)(v) because the remaining proposals from PDS and IT&E were clearly unreasonable prices. The entire purpose of this bid was to save GCC money on phone

services. The remaining bids were so high that if either bidder was awarded the contract, it would defeat the purpose of saving the territory money, and switching to the new VoIP system under the bid would not be worth the cost. Therefore, rejecting the remaining bids in the IFB is in the best interest of the territory.

Accordingly, all bidders are hereby notified that all remaining bids in IFB GCC-FB-015 are rejected because rejecting these bids is in the best interest of the territory. Please feel free to contact me if you have any questions.

Si Yu'os Ma'ase,

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June 7, 2011

VIA FACSIMILE [646-0777]

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Tamuning, Guam 96913

**Re: PDS Protest Dated April 21, 2011**

Dear Sarah:

On April 21, 2011, PDS protested GCC's Rejection of all bids in IFB GCC-FB-015. Despite the passage of 46 days, GCC has not acted on this Protest. Please note that 5 GCA § 5425(c) requires that the purchasing agency promptly issue a decision on a protest.

In the appeal of Townhouse Department Stores, Appeal No. OPA-PA-08-003, the Public Auditor determined that she did have jurisdiction over purchasing agencies to require compliance with the law that protests be promptly decided. In that case, GPSS failed to issue a decision on a protest despite the passage of 65 days, and was ordered by the Public Auditor to issue a decision within 7 days following her decision. She held that delay constituted an act of bad faith which threatened the integrity of the procurement process.

In the appeal of Townhouse Department Stores, OPA-PA-10-006, the Public Auditor determined that it was an act of bad faith for DOE to fail to render a decision on a protest dated September 2, 2010 by October 18, 2010, a period of 46 days, as we have

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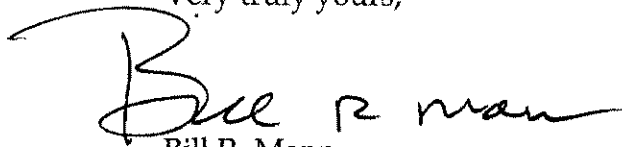
here. I believe that means that GCC is now in bad faith in failing to issue a decision on the PDS protest.

The situation is seriously aggravated by the fact that GCC did nothing for almost 3 months to comply with the Public Auditor's Decision of January 12, 2011, which required GCC to consider the remaining bidders in the subject procurement. It was only after PDS sought an order from the Public Auditor requiring GCC to comply that GCC finally did reject all the remaining bids in its letter of April 7, 2011. The combined delay is clearly evidence of bad faith which GCC should now remedy.

Moreover, I cannot see how it is in the interest of GCC to delay issuing a decision. The procurement by GCC of both telephones and a telephone system is stayed pending the resolution of the PDS protest. I understand that the funding for this project is with ARRA funds, which must be obligated no later than September 30, 2011. Although PDS is hopeful that GCC will resolve its protest in its favor, in any event time is of the essence.

PDS wishes to avoid another appeal to the Public Auditor, which inevitably will result in an order against GCC to make a decision on the PDS protest. PDS will refrain from taking an appeal to the Public Auditor for 7 days from the date of this letter.

Very truly yours,



Bill R. Mann

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June 15, 2011

VIA FACSIMILE (671) 477-4366

Bill R. Mann, Esq.  
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111 Chalan Santo Papa

Re: Denial of Protest of GCC Rejection of Bids in IFB GCC-FB-015

Dear Mr. Mann:

This letter is a formal denial of your April 21, 2011 protest and you have the right to pursue all administrative and judicial remedies. Please be advised that I am addressing this letter to you pursuant to the representations of your office that you are representing PDS in this matter.

GCC rejected the remaining bids in the IFB pursuant to 2 G.A.R. Div. 4 3115 (h)(A)(iv) because prices of the remaining bids exceed available funds and it would not be appropriate to adjust quantities to come within funds and because the supplies and services are no longer required.

After reviewing the concerns detailed in the April 21, 2011 letter from PDS President John Day, here is the final response to your protest:

1. GCC rejected the PDS bid because the bids' price exceeded the available amount of ARRA funding. The PDS bid of \$307,880.50 exceeded the available funds by over \$22,000.00. Therefore, it is in the best interest of the territory to reject the PDS bid.

In response to GCC's position that rejecting this bid which exceeds the available funds is in the best interest of the territory, PDS submits in their April 21, 2011 protest a revised bid based upon their assertion that GCC should have modified the bid quantities to conform to the available funds.

As stated in the April 7, 2011 letter, GCC reviewed the remaining bids and determined that modifying quantities would not be appropriate. PDS submits a reconfiguration of their bid in order to come within the funding limitations. As authority to



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present this downward deviation, PDS cites GCC response to MCV Question #1 in Amendment #3.

The GCC response to Question #1 in Amendment #3 states that "GCC reserves the right to increase or decrease quantity of items anywhere from 0 to 300 according to availability of funds". As stated in the April 7, 2011 rejection of all bids, GCC reviewed the bids and determined that modifying the quantities would not be appropriate.

Amendment 3 reserves GCC's right to make this judgment call regarding modification of quantities. The type of ex post facto unilateral revision sought by PDS in their protest is not addressed by Amendment 3.

2. Pursuant to 2 G.A.R. Div. 4 3115 (d)(2)(A)(i) GCC has decided to reject all bids because the supplies and services are no longer required. As stated in the April 7, 2011 letter, GCC has received notice from GSA of a new IFB which would render IFB GCC-FB-015 redundant.

Therefore, rejecting this bid is in the best interest of the territory. GCC is requesting that the ARRA funds be reprogrammed to other procurement projects that were underfunded and of a higher priority to GCC.

In light of the protest by PDS of the GCC Rejection of Bids in IFB GCC-FB-015 GCC will be exercising its right of delegation of the procurement authority over this matter to the General Service Agency.

GCC has authority to delegate this matter to the GSA according to the GCC Board of Trustees Procurement Policy which states that GCC may, upon the Board of Trustees' approval, delegate its procurement authority of services and supplies contracts to the General Services Agency. I have attached a copy of the GCC Procurement Policy for your review and consideration.

Accordingly, PDS's April 21, 2011 protest is denied and you have the right to pursue all administrative and judicial remedies. Please let me know if you have any questions regarding this matter.

Regards,

**CABOT MANTANONA LLP**  
Attorney for Guam Community College

By:

  
**CATRINA M. CAMPANA**

Enclosure

Policy 228

**GUAM COMMUNITY COLLEGE**  
Board of Trustees

**PROCUREMENT POLICY**

**WHEREAS**, Guam Community College (hereinafter GCC) is authorized to promulgate its own services, supplies, and construction procurement regulations pursuant to 5 G.C.A. § 5125, 5131, 5030(k) and (q), 5126, 5302(b) and (c), 5304(b), 5306(d), and 5307, and

**WHEREAS**, the Board of Trustees wishes to prudently exercise the authority given to the college.

**NOW, THEREFORE, BE IT RESOLVED**, that the procurement laws and regulations established in Guam's Procurement law, found in 5 G.C.A. Chapter 5, and 2 G.A.R. Division 4 shall be used by GCC in the procurement of all services, supplies, and construction procurement contracts. GCC hereby adopts the laws and regulations established in 5 G.C.A. Chapter 5 and 2 G.A.R. Division 4 as its own regulations.

**BE IT FURTHER RESOLVED**, that GCC will employ its own Chief Procurement Officer, who will serve as the procurement officer for all supplies, services, and construction contracts for GCC.

**BE IT FURTHER RESOLVED**, that GCC may, upon the Board of Trustees' approval, delegate its procurement authority of construction contracts to the Department of Public Works.

**BE IT FURTHER RESOLVED**, that GCC may, upon the Board of Trustees' approval, delegate its procurement authority of services and supplies contracts to the General Services Agency.

**BE IT FURTHER RESOLVED**, that GCC may, upon the Board of Trustees' approval, promulgate additional rules and regulations, in addition to those established by 5 G.C.A. Chapter 5, and 2 G.A.R. Division 4.

Amended & Adopted: August 1, 2010  
Resolution 9-2010

Amended & Adopted: November 17, 2008  
Resolution 46-2008  
Adopted: March 16, 1994  
Resolution 15-94