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2 Suite 503, Bank of Guam Bldg.  
3 111 Chalan Santo Papa  
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7 Attorneys for Appellant:  
8 *PACIFIC DATA SYSTEMS, INC.*

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

AUG 02 2011

FILED 10-1006 BY: *HW*

FILE NO. OPA-PA-10-005

OFFICE OF PUBLIC ACCOUNTABILITY

PROCUREMENT APPEALS

8 In the Appeal of  
9 *PACIFIC DATA SYSTEMS, INC.,*  
10 Appellant.

) Docket No. OPA-PA-10-005

) **MOTION OF PACIFIC DATA SYSTEMS,  
INC. TO ENFORCE PUBLIC AUDITOR'S  
DECISION REGARDING AWARD OF  
COSTS**

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12  
13 COMES NOW Pacific Data Systems, Inc. ("PDS") and moves the Public Auditor  
14 to enforce her Decision of January 12, 2011 regarding the payment of PDS' costs in this  
15 procurement, and as grounds therefore states the following:

16 1. On January 12, 2011, the Public Auditor entered her Decision in this  
17 appeal.

18 2. No further appeal was taken by any party to this Decision, which is  
19 now final.

20 3. In the Decision, the Public Auditor awarded PDS its "... reasonable  
21 costs incurred in connection with the solicitation in its August 3, 2010 protest, including  
22 PDS's reasonable bid preparation costs, excluding PDS's attorney's fees ..." See  
23 Decision of January 12, 2011 at ¶ 7 on p. 20.

24 4. By letter dated May 27, 2011, and attached hereto as Exhibit "A",  
25 PDS submitted its invoice for costs in the amount of \$21,299.17 to GCC, along with a  
26 detailed breakdown of how those costs were incurred.



# Exhibit "A"



May 27, 2011

VIA HAND DELIVERY

Ms. Mary A. Y. Okada, Ed.D  
President  
Guam Community Career College  
Mangilao, Guam 96915



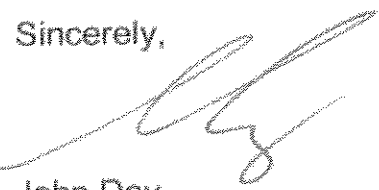
**Re: Reimbursement of PDS costs associated with Bid, Protest, and Appeal reference GCC Invitation for Bid: GCC-10-0015**

Dear President Okada:

Further to the Decision issued by the Public Auditor on January 12, 2011 in Procurement Appeal OPA-PA-10-005 (applicable pages attached), PDS hereby submits our costs for reimbursement as specified in this matter.

Attached to this letter is our invoice number 112023 for \$21,299.17. Included with our invoice is a cost schedule that details these costs.

Please contact me if you have any questions on this matter.

Sincerely,  
  
John Day  
President

- Attachments:
- OPA-PA-10-005 January 12, 2011 Decision (pages 1, 20, 21)
  - PDS Invoice 112023
  - Schedule of PDS Costs re GCC IFB GCC-10-0015

**Pacific Data Systems**  
185 Ilipog Drive, HBC Suite 204A, Tamuning, GU 96913  
Main: (671) 300-0200 | Fax: (671) 300-0265 | [www.pdsguam.com](http://www.pdsguam.com)

**EXHIBIT "A"**



# IFB GCC-FB-015 Voice over Internet Protocol Procurement Schedule of PDS Costs

Task	Who	Details	PDS Bid Preparation Costs			
			rate	unit	qty	total
Pickup Bid	JC	Pickup, copy, scan distribute Bid	\$13.92	FTE hrly cost	3	\$41.76
Copies	Admin	Printing and copying costs	0.10	per page	250	\$25.00
Analysis	JD	Read, discuss, analyze bid requirements	\$69.42	FTE hrly cost	6	\$536.54
Analysis	CV	Read, discuss, analyze bid requirements	\$57.69	FTE hrly cost	4	\$230.77
Analysis	PM	Read, discuss, analyze bid requirements	\$36.92	FTE hrly cost	4	\$147.69
Meeting offsite	JD	Participate in Prebid meeting	\$69.42	FTE hrly cost	2	\$178.85
Meeting offsite	CV	Participate in Prebid meeting	\$57.69	FTE hrly cost	2	\$115.38
Meeting offsite	CV	Participate in Site Survey (2) at campus	\$57.69	FTE hrly cost	4	\$230.77
Analysis	CV	Writeup Site Survey	\$57.69	FTE hrly cost	2	\$115.38
Prep work	JD	Review Site Survey create Questions	\$69.42	FTE hrly cost	2	\$178.85
Prep work	CV	Review Site Survey create Questions	\$69.42	FTE hrly cost	2	\$178.85
Prep work	JT	Review Site Survey create Questions	\$57.69	FTE hrly cost	2	\$115.38
Prep work	PM	Review Site Survey create Questions	\$28.85	FTE hrly cost	2	\$57.69
Admin work	JC	Receive Amendments, ack, scan/copy	\$13.92	FTE hrly cost	2	\$27.84
Copies/Fax	Admin	Receive Amendments, ack, scan/copy	0.10	per page	100	\$10.00
Prep work	JD	Read, discuss, analyze bid amendments	\$69.42	FTE hrly cost	4	\$357.69
Prep work	CV	Read, discuss, analyze bid amendments	\$57.69	FTE hrly cost	2	\$115.38
Prep work	JT	Read, discuss, analyze bid amendments	\$28.85	FTE hrly cost	2	\$57.69
Prep work	PM	Read, discuss, analyze bid amendments	\$36.92	FTE hrly cost	2	\$73.85
Bid Prep	JD	Prepare PDS Bid Response	\$69.42	FTE hrly cost	30	\$2,682.69
Bid Prep	CV	Prepare PDS Bid Response	\$57.69	FTE hrly cost	30	\$1,730.77
Bid Prep	JT	Prepare PDS Bid Response	\$28.85	FTE hrly cost	16	\$461.54
Bid Prep	PM	Prepare PDS Bid Response	\$36.92	FTE hrly cost	16	\$590.77
Bid Prep	JC	Prepare PDS Bid Response	\$13.92	FTE hrly cost	20	\$278.40
Bid Prep	JC	Prepare PDS Bid Response	\$20.88	FTE hrly OT cost	10	\$208.80
Bid Prep	NJA	Prepare PDS Bid Response	\$19.20	FTE hrly cost	20	\$384.00
Bid Prep	NJA	Prepare PDS Bid Response	\$28.80	FTE hrly OT cost	10	\$288.00
Meeting	JD, RJM, CV	Review Bid Submission with Senior Mgmt	\$236.54	FTE hrly cost	2	\$473.08
Copies	admin	Printing and copying costs	0.10	per page	1500	\$150.00
Binders	Admin	Cost of Bid packaging for 1 orig/6 copies	25	per package	6	\$150.00
Bid Bond	Admin	Cashier Check Processing fee	8	bank fee	1	\$8.00
Bid Prep	MG	Cashier Check processing	\$19.20	admin time	1	\$19.20
Mileage	Admin	Mileage expense	\$0.52	per mile	108	\$56.16

**Total Bid Preparation Costs      \$10,276.78**

# IFB GCC-FB-015 Voice over Internet Protocol Procurement Schedule of PDS Costs

Task	Who	Details	PDS GCC Protest Costs			
			rate	unit	qty	total
Review and Research	JD	Review GCC non award	\$89.42	FTE hrly cost	4	\$357.69
Prep work	JD	Prepare FoIR for bids	\$89.42	FTE hrly cost	2	\$178.85
Deliver & Pickup FoIR	JC	Deliver/Pickup, copy, scan distribute FoIR	\$13.92	FTE hrly cost	3	\$41.76
Copies	Admin	Printing and copying costs	0.10	per page	100	\$10.00
Analysis	JD	Read and analyze FoIR documents	\$89.42	FTE hrly cost	10	\$894.23
Meeting offsite	JD	Meet with legal counsel to discuss	\$89.42	FTE hrly cost	2	\$178.85
Research	JD	Do research on basis for protest	\$89.42	FTE hrly cost	4	\$357.69
Prep work	JD	Prepare Bid Protest	\$89.42	FTE hrly cost	10	\$894.23
Meeting	JD,RJM, CV	Review Bid Protest with Senior Mgmt	\$236.54	FTE hrly cost	2	\$473.08
Meeting offsite	JD	Review Bid Protest with legal counsel	\$89.42	FTE hrly cost	2	\$178.85
Prep work	JD	Finalize Bid Protest and file with GCC	\$89.42	FTE hrly cost	2	\$178.85
Delivery and Admin	JT	File Protest with GCC, scan, copy	\$13.92	FTE hrly cost	2	\$27.84
Mileage	Admin	Mileage expense	\$0.52	per mile	36	\$18.72

**Total Bid Protest Costs \$3,790.63**

Task	Who	Details	PDS Appeal of GCC Protest Costs			
			rate	unit	qty	total
Review and Research	JD	Review GCC protest rejection	\$89.42	FTE hrly cost	2	\$178.85
Prep work	JD	Review GTA Bid documents	\$89.42	FTE hrly cost	2	\$178.85
Meet with Atty re Appeal	JD	Discuss basis for OPA Appeal	\$89.42	FTE hrly cost	2	\$178.85
Review and Preparation	JD	Draft OPA appeal	\$89.42	FTE hrly cost	4	\$357.69
Meeting	JD,RJM, CV	Review Appeal with Senior Mgmt	\$236.54	FTE hrly cost	2	\$473.08
Meet with Atty re Appeal	JD	Approve filing of Notice of Appeal	\$89.42	FTE hrly cost	2	\$178.85
Review	JD	Review Procurement Record	\$89.42	FTE hrly cost	2	\$178.85
Review and Analysis	JD	Agency Report	\$89.42	FTE hrly cost	4	\$357.69
Meet with Atty	JD	Pre-Hearing Conference Review	\$89.42	FTE hrly cost	2	\$178.85
Prepare & Attend	JD	11/05/10 Pre-Hearing Conference	\$89.42	FTE hrly cost	2	\$178.85
Research and prep	JD	Motion to Compel GCC re Complete Agency Report	\$89.42	FTE hrly cost	6	\$536.54
Review	JD	Order Ater Hearing	\$89.42	FTE hrly cost	1	\$89.42
Review	JD	Notice of Hearing re Appellant's Motion to Compel and Continue Pre-Hearing Conf	\$89.42	FTE hrly cost	1	\$89.42
Review	JD	Telegram Holdings LLC's Comments on Procurement Appeal and Agency Report	\$89.42	FTE hrly cost	2	\$178.85

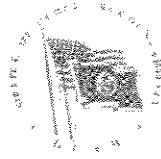
**IFB GCC-FB-015 Voice over Internet Protocol Procurement  
Schedule of PDS Costs**

Task	Who	Details	PDS Appeal of GCC Protest Costs			
			rate	unit	total	
Research and prep	JD	Appellant PDS Comments on Agency Report	\$89.42	FTE hrly cost	4	\$357.69
Review	JD	First Supplemental Procurement Record	\$89.42	FTE hrly cost	4	\$357.69
Review	JD	Real Party In Interest Teleguam Holdings LLC's Opposition to Motion to Compel GCC to Provide Agency Report	\$89.42	FTE hrly cost	2	\$178.85
Review, Analysis, Preparation	JD	Response to Appellant's Motion to Compel GCC to Provide Complete Agency Report	\$89.42	FTE hrly cost	4	\$357.69
Review	JD	Rebutal to Appellant's Comments on the Agency Report	\$89.42	FTE hrly cost	2	\$178.85
Discuss with Counsel	JD	Hearing Request	\$89.42	FTE hrly cost	2	\$178.85
Review/Discuss w/Counsel	JD	Decision and Order RE Appellant's Motion to Compel GCC to Provide Complete Agency Report	\$89.42	FTE hrly cost	4	\$357.69
Research, prep, discuss w/Atty	JD	Supplemental Brief	\$89.42	FTE hrly cost	4	\$357.69
Review/Discuss w/Counsel	JD	Declaration of John Brady	\$89.42	FTE hrly cost	2	\$178.85
Review/Discuss w/Counsel	JD	Real Party In Interest Teleguam Holdings LLC's Response to Appellant's Supplemental Brief	\$89.42	FTE hrly cost	2	\$178.85
Review/Discuss w/Counsel	JD	Motion to Correct Decision	\$89.42	FTE hrly cost	2	\$178.85
Review	JD	Second Supplemental Procurement Record	\$89.42	FTE hrly cost	2	\$178.85
Review	JD	Third Supplemental Procurement Record	\$89.42	FTE hrly cost	2	\$178.85
Review/Discuss w/Counsel	JD	OPA Decision on PDS Appeal	\$89.42	FTE hrly cost	2	\$178.85
Meeting	JD, RJM, CV	Review OPA Decision on PDS Appeal	\$236.54	FTE hrly cost	2	\$473.08
Milage	Admin	Milage expense for offsite meetings	\$0.52	per mille	50	\$26.00

Total OPA Appeal Costs **\$7,231.77**

Total PDS Bid, Protest, and Protest Appeal Costs **\$21,299.17**





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

**PROCUREMENT APPEALS**

IN THE APPEAL OF,  
PACIFIC DATA SYSTEMS, INC.

Appellant

APPEAL NO: OPA-PA-10-005

DECISION

**I. INTRODUCTION**

This is the Decision of the Public Auditor for an appeal filed on October 12, 2010, by PACIFIC DATA SYSTEMS, INC., (Hereafter "PDS") regarding the GUAM COMMUNITY COLLEGE, Government of Guam's (Hereafter "GCC") October 5, 2010 denial of PDS's August 3, 2010, protest concerning GCC's solicitation of Invitation for Bid No. GCC-FB-10-015 Voice Over-Internet Protocol (VoIP) Telephone System Project (Hereafter "IFB"). The Public Auditor holds that GCC erroneously deemed Interested Party TELEGUAM HOLDINGS LLC, dba GTA TELEGUAM's (Hereafter "GTA") bid to be responsive to the IFB after GTA failed to include a valid Major Shareholder's Affidavit at the time GTA submitted its bid. Accordingly, PDS's appeal is GRANTED.

**II. FINDINGS OF FACT**

The Public Auditor in reaching this Decision has considered and incorporates herein the procurement record and all documents submitted by the parties, pursuant to PDS' November 29, 2010 Withdrawal of Request for Hearing. Additionally, the Public Auditor has considered and incorporated herein all testimony and arguments presented at the November 23, 2010 Hearing on

Decision- 1

#### IV. CONCLUSION

Based on the foregoing, the Public Auditor hereby determines the following:

1. Through simple negligence, GTA Submitted a false Major Shareholder Disclosure Affidavit with its Bid in violation of 5 G.C.A. §5233 and 2 G.A.R., Div. 4, Chap. 3, §3109(e)(3)(E) which resulted in GTA's bid being non-responsive to the IFB.
2. Guam Procurement Laws and Regulations prohibit GCC from accepting GTA's September 30, 2010 Major Shareholders affidavit because it is a late modification or correction of the bid after bid opening.
3. GCC's award of the contract to GTA is void because GTA was a non-responsive bidder which GCC should have disqualified and rejected at the time of bid opening.
4. PDS's Appeal is granted.
5. GCC's contract with GTA arising from the IFB for IFB Item Nos. 1.1 thru 7.1 is hereby terminated as of the date of this decision and although GTA is generally entitled to compensation for its actual expenses it reasonably incurred under the contract plus a reasonable profit for the period prior to the termination, the Public Auditor finds that GTA did not incur expenses and is not entitled to reasonable profits because GTA did not perform work under the contract due to GCC not issuing GTA a purchase order.
6. GCC shall consider the IFB's remaining bidders in accordance with Guam Procurement Law and Regulations.
7. PDS is hereby awarded, pursuant to 5 G.C.A. §5425(h)(2), PDS's reasonable costs incurred in connection with the solicitation and its August 3, 2010 protest, including PDS's reasonable bid preparation costs, excluding PDS's attorney's fees, because as PDS was the second highest scoring bidder, there is a reasonable likelihood that PDS would have been awarded the contract but for GCC's acceptance and attempted cure of GTA's non-responsive bid in violation of Guam Procurement Laws and Regulations as set forth above. GCC may object to PDS's cost demand by filing the appropriate motion with the Public Auditor no later than fifteen (15) days after PDS submits such cost demand to GCC.

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This is a Final Administrative Decision. The Parties are hereby informed of their right to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final Administrative Decision. 5 G.C.A. §5481(a).

A copy of this Decision shall be provided to the parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website [www.guamopa.org](http://www.guamopa.org).

DATED this 12<sup>th</sup> day of January, 2011.



DORIS FLORES BROOKS, CPA, CGFM  
PUBLIC AUDITOR

# Exhibit “B”

**CABOT  
MANTANONA LLP**

Attorneys at Law

Cesar C. Cabot, Esq.  
Rawlen M.T. Mantanona, Esq.  
David P. Ledger, Esq.  
Helkel S. Hemminger, Esq.  
Sarah A. Strock, Esq.  
David J. Guameri, Jr., Esq.  
Catrina M. Campana, Esq.

July 6, 2011

VIA FACSIMILE: 300-0265

John Day  
Pacific Data Systems  
185 Ilipog Drive, HBC Suite 204A  
Tamuning, Guam 96913

Re: PDS Bid Preparation Costs

Dear Mr. Day:

Please be advised that I am writing in response to PDS' claim for reasonable costs for reimbursement for reasonable costs incurred in connection with the solicitation and protest of GCC Bid No. GCC-10-0015.

According to the invoice number 112023 and cost schedule prepared by PDS, the bid, protest, and protest appeal costs total \$21,299.17.

5 G.C.A. § 5425(h) entitles a protestant to the reasonable costs incurred in connection with the solicitation and protest, including bid preparation costs and excluding attorney's fees when a protest is sustained.

As per 5 G.C.A. § 5425(h), GCC first requests the revision of the invoice to reflect an hourly rate for non professional work and errands to reflect the current minimum wage of \$7.25/hour.

GCC submits that the nine hours billed as "pickup bid", "Deliver & Pickup FoIR" "admin time" and "Delivery and Admin" should be revised to reflect the current minimum wage. These tasks are detailed as routine errands such as the delivery and copying of documents which we believe cannot reasonably be billed at a rate above the minimum wage.

Letter to John Day Re: PDS Bid Preparation Costs  
July 6, 2011  
Page 2 of 2

Further, GCC requests clarification regarding the 152 hours that the PDS invoice attributes to "Prepare PDS Bid response". These hours are billed in addition to the dozens of hours also listed under the task "bid prep". This accounting reflects almost four weeks of professional work devoted exclusively to the preparation of this bid.

It is GCC's position that the hundreds of hours billed in Invoice 112023 for bid prep are not a reflection of the reasonable amount of time devoted to the routine preparation of a bid package. This being the case, GCC requests that PDS revise the invoice to reflect the reasonable hours devoted to bid preparation.

GCC requests that PDS Invoice Number 112023 be revised to reflect these changes listed above in order to bring the invoice in conformity with 5 G.C.A. § 5425(h). Please do not hesitate to contact me at my office if you have any questions or concerns regarding the above noted response.

Si Yu'os Ma'ase,



CATRINA M. CAMPANA

**CABOT  
MANTANONA LLP**  
Edge Bldg., Second Floor  
929 South Marine Corps Drive  
Tamuning, Guam 96913

Attorneys-at-Law  
Cesar C. Cabot, Esq.  
Rawlen M.T. Mantanona, Esq.  
David P. Ledger, Esq.  
Helkel S. Hemminger, Esq.  
David J. Guerrieri, Esq.  
Catrina M. Campana, Esq.

**FACSIMILE TRANSMITTAL SHEET**

**TO:** John Day  
PACIFIC DATA SYSTEMS

**FACSIMILE #:** (671) 300-0265

**FROM:** CATRINA M. CAMPANA, ESQ.

**DATE:** July 6, 2011

**CLIENT/  
MATTER:** PDS Bid Preparation Costs

**NO. OF PAGES INCLUDING THIS TRANSMITTAL SHEET:** 3 Page(s)

**COMMENTS:**

Please see the attached letter regarding the above matter.

Thank you.

Stacy Cuasito  
Legal Secretary

*The information contained in this facsimile message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service.*

Please contact Stacy at 646-2001 if this transmission is incomplete or illegible.  
Si Yu'os Ma'ase

# Exhibit "C"





July 12, 2011

via Fax to 646-0777

Page 1 of 1

Ms. Catrina M. Campana, Esq.  
Cabot Mantanona LLP  
Edge Bldg., Second Floor  
929 South Marine Corps Drive  
Tamuning, GU 96913

Re: Your Fax of July 6, 2011 re PDS Cost Demand from GCC

Dear Ms. Campana:

PDS is receipt of your fax of July 6, 2011 regarding the cost demand claim that PDS made to GCC on May 27, 2011, in response to the Decision issued by the Public Auditor in Procurement Appeal OPA-AP-10-005 related to GCC Bid No. GCC-10-0015.

In Section IV Conclusion of the Decision (a copy of which PDS provided to GCC with our letter on May 27, 2011) the Public Auditor instructed GCC as follows:

*GCC may object to PDS's cost demand by filing the appropriate motion with the Public Auditor no later than fifteen (15) days after PDS submits such cost demand to GCC. (emphasis added)*

PDS made its cost demand to GCC on May 27, 2011 and the 15 day time period for GCC to object to this cost demand has long since lapsed. Also, any objections that GCC may have had to the PDS cost demand should have been filed with the Public Auditor not PDS.

PDS does attest to the accuracy of the cost demand that we have made to GCC and once more requests that GCC reimburse PDS these costs as ordered by the Public Auditor. If PDS does not receive payment by GCC for its costs (PDS Invoice 112023) by July 19, PDS will file a motion with the Public Auditor to compel GCC to make payment and to further reimburse PDS for any additional costs incurred in this matter plus applicable interest on the amounts due.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Day', written over a white background.

John Day  
President

185 Ilipog Drive, HBC Suite 204A, Tamuning, GU 96913  
Main: (671) 300-0200 | Fax: (671) 300-0265 | www.pdsguam.com

EXHIBIT "C"