



September 14, 2012

VIA HAND DELIVERY

Mrs. Doris Flores-Brooks
Public Auditor
Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 09/14/12

TIME: 4:32 AM PM BY: C. Roque

FILE NO OPA-PA: 12-012

Re: Procurement Appeal OPA-PA-12-012, Comments on GSA Agency Report

Dear Mrs. Flores-Brooks:

This letter represents comments from Appellate, Pacific Data Systems (PDS), on the GSA Agency Report and Procurement Record in the above referenced Procurement Appeal.

In point (g) of its Agency Report and the referenced Notice that GSA provided to bidders on May 18, 2012, (Exhibit A), GSA attempts to justify its failure to make a determination on pending protests due to the appeal filed by PDS on May 17, 2012, (this appeal was later designated as OPA-PA-12-011). Though the PDS appeal only dealt with the award of one part of the bid¹. GSA has chosen to use the PDS appeal as a justification for doing nothing further in the procurement, though there are 5 protests pending in the procurement². GSA' position is based on a mistaken belief that the stay of the procurement referenced in its report (5 GCA Section 5425g) justifies GSA ceasing any and all work to resolve or to make a determination in the pending protests. A clear reading of this whole section of law, particularly 5 GCA Section 5425c, should have answered any questions that GSA had related to whether it needed to take "prompt" action on this issues. Instead, GSA, by its memo of May 18, 2012, chose to take "no action" on these pending issues.

In point (i) of its Agency Report, GSA references a pending Taxpayer Lawsuit filed against Claudia Acfalle (CV0647-11). This case does not involve this GSA procurement and Claudia Acfalle has previously stipulated that she had recused herself from all matters related to this procurement (see Exhibit B).

¹ GSA IFB-064-011 had a total of 12 parts, each which was awarded individually. The PDS Appeal only dealt with one of the award decisions by GSA; Part 10

² Protests have been filed by PDS (filed 5/09/2012), MCV (filed 5/10/2012), Docomo Pacific (filed 5/10/2012), IT&E (filed 5/10/2012), and GTA (filed 5/18/2012).



The Agency Report produced by GSA reinforces the basis for this PDS Appeal to the OPA and underscores the need for the OPA to take up this issue and use her discretionary powers and to compel GSA to make a determination in the pending protests in this procurement.

PDS renews its request that the OPA deal with this matter on an expedited basis in order to restore the integrity of the procurement process and force GSA to deal with these long pending issues.

Since Appellant, PDS, believes the facts in this appeal are undisputed by the parties and that further delay will perpetuate the current untenable situation, PDS waives its right to a hearing on this Procurement Appeal and requests that the OPA decide this matter based on the filings that have been made by the parties.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Day', is written over a light blue horizontal line.

John Day
President

- Exhibit A: Copy of GSA Memo of May 18, 2012 issued reference IFB-064-11
- Exhibit B: Copy of Claudia Acfalle Memo of May 30, 2012 re her recusal in IFB-064-11



Exhibit A

Copy of GSA Memo of May 18, 2012 issued reference IFB-064-11

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Aghenslan Setbision Hinirat)
Department of Administration

Ray Tenorio
Lieutenant Governor

Benita A. Mangiona
Director

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 475-1716

Anthony C. Blaz
Deputy Director

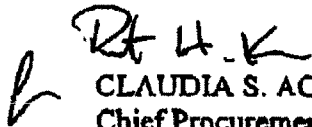
May 18, 2012

Memorandum

All bidders on GSA Bid No. 064-11

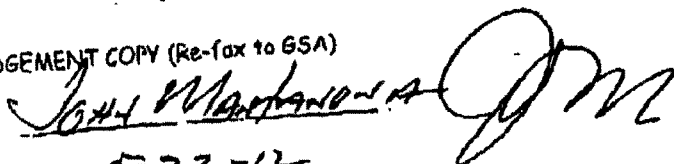
Re: GSA Bid 064-11

This is to inform you that on May 17,2012 an appeal was filed by Pacific Data System with the Office of Public Accountability on the above stated bid. As such, no action will be taken on GSA bid 064-11 until the resolution of this appeal.


CLAUDIA S. ACFALLE
Chief Procurement Officer

Please Print
ACKNOWLEDGEMENT COPY (Re-fax to GSA)

Received BY:



Date:

5-22-12

Vendor Name:

Pacific Data Systems

Fax #'s:

472-4217 / 475-1727 / 1716



Exhibit B

Copy of Claudia Acfalle Memo of May 30, 2012 re her recusal in IFB-064-11

Governor



(Ahensian Setbision Hinirat)

Lieutenant Governor

Department of Administration

Benita A. Manglona

Director

148 Route 1 Marine Drive, Piti, Guam 96915

Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 475-1716

Anthony C. Blaz

Deputy Director

May 30, 2012

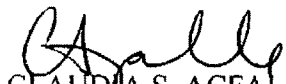
Memorandum

To File:

I, Claudia S. Acfalle, Chief Procurement Officer for the General Services Agency do hereby memorialize the following:

I had recues myself from making any substantive decision or determination or any type of involvement relative to the analysis or awarding of IFB #GSA-064-11. However, administratively I recently have signed memorandums to all bidders informing them that due to an appeal filed, that no action can be taken until the appeal is resolved.

This decision was made based upon consultation with Assistant Attorney General Fred Nishihira of the Office of the Attorney General and Arthur Clark, Governor's Policy Advisor and the lawsuit that was filed against me by Pacific Data Systems Inc. and John Day vs. Government of Guam and Claudia Acfalle, personally and in her capacity as Chief Procurement Officer for the government of Guam, defendants CV0647-11.


CLAUDIA S. ACFALLE
Chief Procurement Officer

COMMITTED TO EXCELLENCE