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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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Attorney for Appellee, Guam Community College

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

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|----------------------------|---|---------------------------------|
| In the Matter of Appeal of |) | Docket Number: OPA-PA-10-005 |
| PACIFIC DATA SYSTEMS, INC, |) | |
| |) | RESPONSE TO APPELLANT'S |
| Appellant |) | MOTION TO ENFORCE PUBLIC |
| |) | AUDITOR'S DECISION |
| |) | |
| |) | |
| |) | |
| |) | |

Appellee Guam Community College, (hereinafter "GCC"), by and through its attorney, Sarah A. Strock, of Cabot Mantanona LLP, respectfully submits this Response to Appellant's Motion to Enforce Public Auditor's Decision.

After the Public Auditor issued her decision disqualifying GTA's bid, GCC reviewed the remaining bids from PDS and IT&E. After Appellant's Motion was filed, GCC drafted a letter to legal counsel for PDS, IT&E and GTA explaining that GCC was rejecting all remaining bids for the Voice over Internet Protocol (VoIP) system because it was not in the best interest of the territory. See Exhibit A. GCC rejected the remaining bids for several reasons.

First, 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 available funds. After the Office of Public Accountability issued its Decision, GCC reviewed the remaining bids

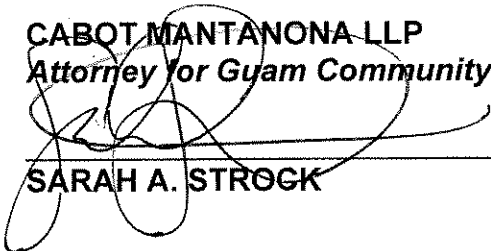
from PDS and IT&E. Both of the remaining bids' prices exceeded the available amount of ARRA funding. GCC also reviewed the bids to see if adjusting the quantities would be appropriate to come within the available funds, and determined it would not be appropriate. After determining that the remaining bids both exceeded the amount of available funding, and that modifying quantities would not be appropriate, GCC requested for 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 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 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, GCC all notified all of the bidders that the remaining bids in IFB GCC-FB-015 were rejected because it is in the best interest of the territory. Since GCC considered all remaining bids but opted to reject all of the remaining bids, GCC is not has followed the law and fulfilled its obligations to consider the remaining bids under the Public Auditor's Decision.

Respectfully submitted this 22ND day of April, 2011.

CABOT MANTANONA LLP
Attorney for Guam Community College
By: 
SARAH A. STROGK

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,

CABOT MANTANONA LLP
Attorney for Guam Community College

By:



SARAH A. STROCK