



**Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL**

PART I- To be completed by OPA

| | | |
|--|---|---------------------------------|
| In the Appeal of |) | NOTICE OF APPEAL |
| |) | |
| Pacific Data Systems, Inc (PDS) |) | |
| (Name of Company), APPELLANT |) | Docket No. OPA-PA <u>14-013</u> |
| |) | |
| _____ |) | |

PART II- Appellant Information

Name: Pacific Data Systems, Inc (PDS)
Mailing Address: 185 Ilipog Drive, Suite 204A
Tamuning, GU 96913
Business Address: same as above
Email Address: John@pdsguam.com
Daytime Contact No: 671-300-0202
Fax No.: 671-300-0265

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 12/9/14
TIME: 2:30 AM PM BY: Thyer
FILE NO OPA-PA: 14-013

PART III- Appeal Information

- A) Purchasing Agency: Guam Power Authority (GPA)
- B) Identification/Number of Procurement, Solicitation, or Contract: IFB Bid GPA-072-14 MS
- C) Decision being appealed was made on November 21, 2014 (date) by:
 GPA Chief Procurement Officer _ Director of Public Works _ Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

- D) Appeal is made from: *(Please select one and attach a copy of the Decision to this form)*
 Decision on Protest of Method, Solicitation or Award
 Decision on Debarment or Suspension
 Decision on Contract or Breach of Contract Controversy
 (Excluding claims of money owed to or by the government)
 Determination on Award not Stayed Pending Protest or Appeal
 *(Agency decision that award pending protest or appeal was necessary to protect the
substantial interests of the government of Guam)*

- E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:
- **Teleguam Holdings, LLC**
 - **Docomo Pacific, Inc.**

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PROCUREMENT APPEAL

PART IV- FORM AND FILING

This is a Procurement Appeal made under §12201 by Pacific Data Systems (PDS) of a Protest Decision by Guam Power Authority (GPA) regarding the award in the above referenced procurement. The original protest made by PDS in this Appeal was made on November 17, 2014 (see Exhibit 1). The PDS Protest was denied by GPA in a Decision letter faxed to PDS on November 21, 2014 (see Exhibit 2).

Background

On September 18, 2014, GPA issued a Multi-Step Invitation for Bid, GPA-072-14 MS, for Voice and Data Services. On October 24, 2014, three bidders, PDS, Teleguam Holdings LLC (GTA), and Docomo Pacific Limited, Inc (Docomo) responded to the GPA bid. On November 4, 2014, GPA completed its Phase I evaluation and qualified all three bidders to proceed to Phase II. On November 6, 2014, GPA held a public opening of the cost proposal for each of the bidders. On November 13, 2014 GPA issued a Notice of Intent of Possible Award and Bid Status (see Exhibit 3) that showed a split award of the various services split between PDS and Docomo. On November 17, 2014 GPA issued a contract and purchase order effective November 18, 2014 to PDS for the items awarded to PDS (see Exhibit 4). On the same day, November 17, 2014, PDS filed the protest that is the subject of this appeal.

It is PDS' position that no awards had been finalized or effectuated by GPA prior to the timely protest by PDS on November 17, 2014 and that a Stay now exists in this procurement.

PDS Protest and GPA Decision

The PDS Protest of November 17, 2014 (attached as Exhibit 1) was based on two issues; the first issue dealt with the award by GPA of regulated local telecommunications services to Docomo, when Docomo does not have the regulatory authority to provide these services; a violation of Guam law 12 GCA §12103(a) and the requirements of the IFB. The second issue was the requirement by GPA for PDS to post additional bid security via a 100% Performance Bond.

The GPA Protest Decision (attached as Exhibit 2) withdrew the requirement for the 100% performance bond but denied the PDS Protest related to the lack of regulatory authority of Docomo stating:

“Docomo Pacific, Inc. has been granted a Certificate of Authority from the Guam Public Utilities Commission (GPUC) copies of which are attached hereto.”

The GPA Decision included documents that Docomo provided with its bid that apparently GPA used to make its decision regarding regulated telecommunications services related to the planned awards for Bid Items A-3, A-4, A-5. However, these documents were **NOT** issued to Docomo Pacific, Inc,

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

but apply to a different entity; Guam Telecom LLC (GTL). It is GTL that is named as the entity that holds the regulatory authority to provide local Telecommunications Services on Guam. No documentation was provided for the Bidder; Docomo Pacific, Inc.

PDS Procurement Appeal

PDS is appealing the decision made by GPA in the PDS Protest related to the ability and authority of Docomo to provide the regulated local telecommunications services specified by GPA in this procurement; specifically Bid Items awarded by GPA to Docomo; A-3, A-4, A-5. These services meet the definition of local telecommunications services that fall under the regulatory authority of the Guam Public Utilities Commission (GPUC). Reference 12 GCA §12102(i). As such any "person" as defined by 12 GCA §12102(f) must first obtain a Certificate of Authority before it can sell or resell these services. To the best of PDS' knowledge, Docomo does not possess the prerequisite GPUC Certificate of Authority to provide the regulated local telecommunications services that Docomo has offered to GPA in its bid. It seems that Docomo, and GPA through its award and Protest Decision, believe they can substitute or rely on the regulatory Authority granted to another entity, GTL in this case, to meet this requirement of Guam law. Reference 12 GCA §12103(a). PDS disagrees.

Docomo Pacific, Inc. is the Bidder and entity that submitted this bid to GPA and it is the entity that must meet all of the bid requirements for the applicable services covered by this procurement¹. Both of the other bidders, PDS and GTA, met all of the regulatory requirements and would be greatly prejudiced by GPA applying a double standard in the evaluation of the IFB regulatory requirements (see Exhibit 6).

Since Docomo Pacific, Inc. did not meet the regulatory requirements to provide the services being bid, it appears that Docomo included the regulatory documentation for another entity, Guam Telecom LLC (GTL) for this purpose. Though Docomo and GTL may share some corporate relationship in their ownership, they are still two separate legal entities with separate business licenses, Annual Report Filings to Dept of Revenue and Tax, FCC Filer Identifiers, FCC Eligible Telecommunications Provider designations, etc. (see copies as Exhibit 5 for GTL Corporate Documents available in the public domain). Also no other information is provided by Docomo in its bid that explains the involvement of GTL in this procurement or its specific corporate relationship to Docomo. PDS also notes that GTL is not listed as a Bidder in the procurement and no Bidder Qualification information was provided for GTL as required by the IFB.

GPA failed to do a proper evaluation of the Docomo Bidder Qualifications as specified in the IFB Bid Requirements reference page 13 of the IFB Volume 1 Commercial Terms and Conditions (copy attached as Exhibit 6). A proper evaluation would have rejected Docomo for consideration of any of the regulated services due to the fact that Docomo lacked the proper GPUC authority to provide these services to GPA. This error by GPA violates Guam Procurement Law and Regulation (reference 5

¹ Some of the Voice and Data services requested by GPA are not subject to GPUC regulation.

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GCA 5211(c)) and is prejudicial to PDS and GTA who fully complied with all Bidder Qualification requirements of the GPA IFB.

RULING REQUESTED BY THE OPA IN THIS APPEAL:

- A. PDS requests an immediate order from the OPA requiring enforcement of a Stay in this procurement effective with the filing of the PDS protest on 11/17/2014.
- B. PDS seeks a *de novo* review of the GPA evaluation, decision and award made in this procurement to Docomo Pacific, Inc regarding bid items A-3, A-4, and A-5.
- C. PDS requests an order from the OPA that rescinds awards that may have or have been made by GPA to Docomo Pacific, Inc. for Bid Items A-3, A-4, and A-5.
- D. PDS requests reimbursement of any and all applicable costs as may be determined by the OPA in this matter including the cost for attorney fees.
- E. PDS requests that a hearing be held on this matter at the earliest opportunity.

SUMMARY OF SUPPORTING EXHIBITS ATTACHED HERETO:

- Exhibit 1: PDS Protest, November 17, 2014
- Exhibit 2: GPA Protest Decision, November 21, 2014
- Exhibit 3: GPA Notice of Possible Award and Bid Status, November 13, 2014
- Exhibit 4: GPA Purchase Order and Contract effective November 18, 2014
- Exhibit 5: Guam Telecom Limited (GTL) corporate information
- Exhibit 6: GPA IFB GPA-072-14 MS page 13 of Volume I regarding Regulatory Authority

PART V – DECLARATION REGARDING COURT ACTION

The undersigned party does hereby confirm that to the best of his knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 9th day of December 2014.

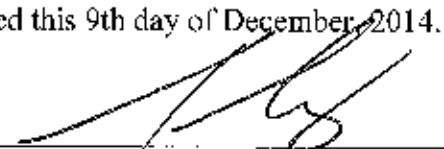
By: 
APPELLANT - Pacific Data Systems
by John Day, its President

Exhibit 1:

PDS Protest,
November 17, 2014



COPY

November 17, 2014

via hand delivery

Mr. John M. Benavente, P.E.
Interim General Manager
Guam Power Authority
P. O. Box 2077
Agaña, GU 96932-2977



Subject: PROTEST of GPA Invitation for Multi-Step Bid GPA-072-14

Dear Mr. Benavente:

PDS now files this procurement protest under G.C.A. 5 § 5425(a) regarding the above referenced procurement. PDS has filed this protest in order to call to GPA's attention the following issues related to the Notice of Intent of Possible Award and Bid Status issued to PDS on November 13, 2014 (copy attached as Exhibit 1).

1. In the Bid Status included with the GPA letter of November 13, 2014, GPA has recommended award for Telecommunications Services A-3, A-4, A-5 to Docomo Pacific, Inc. However, Docomo Pacific, Inc. lacks proper authorization by the Guam Public Utilities Commission (GPUC) to provide the local Telecommunications services required by GPA as defined in bid specifications A-3, A-4, A-5. Title 12, Chapter 12 of the Guam Code Annotated §12103(a) states in part

No person shall provide or resell telecommunications service in Guam without a certificate of authority issued by the Commission, except that a certificate of authority shall not be required for any person to provide commercial mobile service.

Title 12, Chapter 12 of the Guam Code Annotated §12102(i) defines "Telecommunications Service" as follows:

"Telecommunications Service" means the offering of telecommunications, between originating and terminating points in Guam, for a fee directly to the General Public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

GPA Bid specifications for items A-3, A-4, A-5 describes Telecommunications Services required to link various GPA locations on Guam using Metro Ethernet



Public Data Systems

Services. These data connections meet the definition for Telecommunications Services as defined above in 12 GCA §12102(i).

GPA IFB Technical Proposal Section 2.10.1.1.e requires the bidder to provide Regulatory documentation related to the Voice and Data services to be provided to GPA. PDS provided evidence of its Certificate of Authority issued by the Guam Public Utility Commission on September 23, 2005. PDS also provided a copy of its Business License that shows that it is licensed to provide Telecommunication Services on Guam. PDS is fully qualified to provide the required GPA telecommunication services defined for IFB items A-3, A-4, A-5.

Docomo Pacific, Inc. does not possess the required GPUC regulatory approval to provide the Telecommunications Services specified by GPA in this procurement. Without the GPUC authorization it would be illegal for Docomo Pacific, Inc. to provide these services to GPA as part of this Bid. As such the award by GPA of IFB items: A-3, A-4, A-5 to Docomo Pacific, Inc. must be rescinded and the award of these items made to the next lowest responsive bidder.

2. In its letter of November 13, 2014, GPA requested that PDS post a Performance Bond equal to 100% of the bid award being made to PDS. PDS has already provided bid security via a bid bond of 15% with its bid as required by 5 GCA § 5212(h). Reference 5 GCA §5212(g) no additional bid security should be required. In light of this information, PDS requests that GPA withdraw its requirement for PDS to post any additional bid security.

GPA is reminded that PDS has filed a timely protest of this procurement and no further action can be taken until this protest has been duly reviewed and an appropriate determination made (5 GCA §5425(g)).

Sincerely,

John Day
President

cc: Ms. Jaime L. C. Pangelinan - Supply Management Administrator

Exhibit 1: GPA Notice of Intent of Possible Award dated November 13, 2014



Exhibit 1

GPA Notice of Intent of Possible Award dated November 13, 2014



GUAM POWER AUTHORITY

AFURIDAT ILEKTRESEDAT GUAHAN
P.O. BOX 2977 - AGANA, GUAM U.S.A. 96932-2977

November 13, 2014

John Day
President / COO
Pacific Data Systems
105 Wilcox Drive, HEC Suite 204a
Tamuning, Guam 96911

**RE: NOTICE OF INTENT OF POSSIBLE AWARD ON INVITATION FOR
MULTI-STEP BID NO.: GPA-072-14 FOR VOICE AND DATA SERVICES**

Dear Mr. Day

As a result of invitation for Multi-Step Bid No.: GPA-072-14, your bid for the Voice & Data Services for a Three (3) Year Period, for Line Items A-6 and A-7 thru A-13 in the amount of \$184,315.51 is being considered for possible award. However, you are required to provide a PERFORMANCE BOND in the amount of 100% of the Contract Price as specified in Section 12 of the General Terms and Conditions.

You are hereby advised that this Notice of Intent of possible award should not be construed as an award by Guam Power Authority. However, you are requested to submit your Performance Bond on or before fourteen (14) days after receipt of this letter so that consideration of possible award and release of purchase order may be issued. Enclosed is a Performance Bond Form for your perusal.

Your failure to submit the performance guarantee bond by the established deadline will result in delay of the award.

Should you require additional clarification please contact Jamie L.C. Pangelliran, Supply Management Administrator at 648-3034/53.

Sincerely,

PLEASE ADVISE US BY SIGNING BELOW AND RETURNING THIS FAX TO US AT THE ADDRESS FAX NO. 648-3036.

John M. Benavente 11/13/2014
PRINTED NAME: DATE

John M. Benavente
JOHN M. BENAVENTE, P.E.
Interim General Manager

COMPANY

APPRECIATE YOUR IMMEDIATE RESPONSE.
THANK YOU.

GPA PROCUREMENT DIVISION
TEL: (671) 648-3034/53

Message Confirmation Report

13-NOV-2014 10:32 THU

WorkCentre M20 Series
Machine ID : Pacific Data Systems
Serial Number : RYU412612
Fax Number : 671.3000265

Name/Number : 964831 55
Page : 1
Start Time : 13-NOV-2014 10:32 THU
Elapsed Time : 00:34"
Mode : STD 03
Results : O.K

Transmitted: 10/26/14 Printed: 11/13/14

Page: 1/4



GUAM POWER AUTHORITY
ATURIDAT ELEKTRESIDAT GUAHAN
P.O. BOX 2977 • AGANA, GILMUN, G.A. 96932-2977

November 13, 2014

John Day
President / CEO
Pacific Data Systems
180 Spring Drive, HIG Buho 200A
Tamuning, Guam 96913

RE: NOTICE OF INTENT OF POSSIBLE AWARD ON INVITATION FOR
MULTI-DROP BID NO.: GPA-072-14 FOR VOICE AND DATA SERVICES

Dear Sirs,

As a result of the Multi-Drop Bid No.: GPA-072-14, your bid for the Voice & Data Services for a
Three (3) Year Period, Part Line Items A-6 and A-7 then A-13 in the amount of \$165,516.59 is being
considered for possible award. However, you are required to provide a PERFORMANCE BOND in the
amount of 100% of the Contract Price as specified in Section 12 of the General Terms and Conditions.

You are hereby advised that this Notice of Intent of possible award should not be construed as an award by
Guam Power Authority. However, you are requested to submit your Performance Bond on or before
fifteen (14) days after receipt of this letter so that consideration of possible award and release of purchase
order may be issued. Enclosed is a Performance Bond Form for your perusal.

Your failure to submit the performance guarantee bond by the established deadline will result in disbar of the
BID BY.

Should you require clarification please contact Corissa Jamie L.C. Purgollan, Supply Management
Administrator at 671-3000406.

PLEASE CONFIRM RECEIPT BY
SIGNATURE AND DATE AND RETURN THIS PAGE
TO THE OFFICE OF THE GENERAL MANAGER
DATE 11/13/2014
PDS

Sincerely,
JOHN M. DENAYENTE, P.E.
Interim General Manager

APPRECIATE YOUR PROMPT RESPONSE.
THANK YOU.
GPA OPERATIONAL LOCATION
TEL: (671) 441-3100



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

November 13, 2014

BID STATUS

John Day
President / CEO
Pacific Data Systems
185 Alifan Drive, HSC Suite 204A
Tamuning, Guam 96910

MULTI-STEP BID INVITATION: GPA-072-14

OPENED: November 06, 2014

DESCRIPTION: Voice & Data Services

The following is the result of the above-mentioned bid. Refer to items checked below.

- Cancelled (in its entirety), or partially canceled due to:**
- Insufficient funds;
 - Change of specifications;
 - Best interest of the Government
- Rejected due to:**
- Late submission of bid;
 - No bid security or insufficient bid security amount submitted: as required by Section 11 of the General Terms and Conditions;
 - Not meeting the delivery requirements as stated in the IFB;
 - Non-conformance with the specifications;
 - Inability to provide future maintenance and services to the equipment;
 - High price: (Items A-1, A-2, A-3, A-4, and A-5)
 - Others:

Bid is recommended for award to: Docomo Pacific, Inc., Item A-1, A-2, A-3, A-4 and A-5, \$158,000.00 and Pacific Data Systems, Items A-6 and A-7 thru A-13, \$164,315.51.

The Guam Power Authority greatly appreciates the interests and participation in our bids.


JOHN M. BENAVENTE, P.E.
Interim General Manager



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 98932-2977

BOND NO.: _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that (here insert full name and address or legal title of Contractor) _____ as Principal, hereinafter called, Contractor, and (Surety Company), called Surety, are held and firmly bound unto the Territory of Guam as Oblige, in the amount of _____ Dollars (\$ _____), for the payment whereof Contractor and Surety bind themselves, their heirs, executor, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____ entered into a contract with the Territory of Guam for (describe project and insert project number) _____ which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract then this obligation shall be null and void, otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension provided the same is within the scope of the contract. Whenever Contractor shall be and is declared by the Territory of Guam to be in default under the Contract, the Territory of Guam having performed territorial obligations there under, the Surety may promptly remedy the default or shall promptly:

1. Complete the Contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Territory of Guam and the Surety jointly of the lowest responsive, responsible bidder, arrange for a contract between such bidder and the Territory of Guam, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion amended under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract (which may not exceed, including other costs and damages for which the Surety may be liable hereunder, the sum or set forth in the first paragraph hereof. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable by the Territory of Guam to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Territory of Guam to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Territory of Guam or successors of the Territory of Guam.

Signed and sealed this _____ day of _____, 20____

(PRINCIPAL) (SEAL)

(PRINTED)

(PRINTED)

INSTRUCTIONS TO PROVIDERS:**NOTICE to all Insurance and Bonding Institutions:**

The Board requires the signatures of the Vendor, two (2) major Officers of the Surety and Resident General Agent, if the Surety is a foreign or alien surety.

When the form is submitted to the Guam Power Authority, it should be accompanied with copies of the following:

1. Current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation.
2. Power of Attorney issued by the Surety to the Resident General Agent.
3. Power of Attorney issued by two (2) major Officers of the Surety to whoever is signing on their behalf.

Bids, submitted as Bid Guarantees, without signatures and supporting documents are invalid and bids will be rejected.

Exhibit 2:

GPA Protest Decision,
November 21, 2014



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Tel: (671) 648-3225; Fax: 648-3290

DENIAL OF PROCUREMENT PROTEST

November 21, 2014

VIA FAX: 300-0265

Mr. John Day
President
Pacific Data Systems
185 Mipog Drive
HABC Suite 204A
Tamuning, GU 96913

RE: Guam Power Authority's Response to Pacific Data Systems' Protest dated November 17, 2014, for GPA-IFB-072-14, Voice and Data Services

Dear Mr. Day:

I have reviewed your protest letter dated November 17, 2014, protesting the Guam Power Authority's (GPA) proposed award to Docomo Pacific, Inc. of items A-3, A-4 and A-5. Your Protest is hereby denied for the following reasons:

1. You indicated in your letter that you believe that Docomo Pacific, Inc. lacks proper authorization from the Guam Public Utilities Commission (GPUC) to provide local telecommunications services, specifically with regard to items A-3, A-4 and A-5 in the bid. Docomo Pacific, Inc. has been granted a Certificate of Authority by the GPUC, copies of which are attached hereto. In addition, you complained that GPA has requested a 100% performance bond. GPA has reviewed your existing bid bond provided by Moylan's Insurance, and has determined that the bid bond will be adequate to protect the interests of GPA, and has further

advised you that no additional performance bond will be required from Pacific Data Systems. Thereby, your protest is denied on these grounds. GPA reviewed the bid packages and provided a notice of intent to award to the lowest responsible and responsive bidder. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bids. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2).

2. GPA has determined that Docomo Pacific, Inc. should be awarded the bid for Voice and Data Services, for items A-1, A-2, A-3, A-4, and A-5, as they were deemed to be the lowest, responsive and responsible bidder. The Docomo Pacific, Inc. bid was responsive to the IFB and complied with the specifications set forth in the IFB. Therefore, GPA hereby finds that there is no merit to the Pacific Data Systems' claim that their bid was the lowest responsive bid for these items, and the Pacific Data Systems' bid was properly rejected due to high price on these items. Pacific Data Systems was in fact awarded items A-6 and A-7 through A-13, because for those items it was in fact the lowest responsive bidder.

Pacific Data Systems is hereby ON NOTICE that this is the Guam Power Authority's final decision concerning Pacific Data Systems' November 17, 2014, protest for the above described IFB. You are hereby advised that Pacific Data Systems has the right to seek judicial review.

Sincerely,


JOHN M. BENAVENTE, P.E.
Interim General Manager

PLEASE ACKNOWLEDGE RECEIPT BY
SIGNING BELOW AND RETURN THIS FAX
TO MELISSA UNCANGCO. FAX NO: 648-3166.

PRINT/SIGNATURE _____ DATE _____

COMPANY _____

APPRECIATE YOUR IMMEDIATE RESPONSE.
THANK YOU.

GPA PROCUREMENT DIVISION
TEL.: (871) 648-3054/55

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PETITION OF GUAM TELECOM LLC
FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER

GT DOCKET 10-02



ORDER APPROVING DESIGNATION

Procedural History

On October 26, 2010, Guam Telecom LLC ("GT") submitted a Petition for Designation as an Eligible Telecommunications Carrier ("ETC") throughout the Territory of Guam.¹ In its petition, GT acknowledged the authority of the Commission to make such a designation and stated that it had never made an ETC application to the Federal Communications Commission ("FCC"). In its Petition, GT contends that it should be granted ETC Designation based upon the criteria and standards set forth in prior Commission Orders and precedent.²

On November 6 and 8, 2010, the FUC placed a notice in the Pacific Daily News inviting written comment from interested parties, on or before November 22, 2010, on GT's Petition for ETC Designation.³ To date no comments have been received. On November 15, 2010, FUC Counsel filed his Report recommending that, subject to certain conditions, that GT's Petition be granted.⁴

Previously GT was issued a Certificate of Authority by the FUC to provide resold and facilities based local exchange services on Guam.⁵

Discussion and Findings of Fact

1. Pursuant to 47 U.S.C. §214(e)(2), the Commission is generally responsible for designating a telecommunications carrier as an ETC within the Territory of Guam in accordance with the requirements of the Federal Act.

¹ GT Petition for Designation as an Eligible Telecommunications Carrier, GT Docket 10-02, filed October 26, 2010.

² See PUC Orders Approving ETC Designation in Docket No. 06-08, Application of Pulse Mobile, LLC (Pulse Mobile); and Docket 08-05, Application of PTI Pacific.

³ See Notice, GT Docket 10-02, published in the Pacific Daily News on November 6, 2010.

⁴ PUC Counsel Report, GT Docket 10-02, filed November 15, 2010.

⁵ See GT Docket No. 09-01; in Docket 10-01, PUC approved GT's General Exchange Tariff No. 1.

2. The Federal Act provides that the Commission may designate a telecommunications carrier as an ETC if the following requirements are satisfied:
- the carrier offers services that are supported by the federal universal service support mechanism, either using its own facilities or a combination of its own facilities and resale of another carrier's services;
 - the carrier advertises the availability of such services and the charges therefore using media of general distribution; and
 - the designation of such carrier as an ETC is in the public interest (if such carrier is seeking designation for an area served by a rural telephone company that has already been designated as an ETC).⁶
3. GT is authorized to provide resale and facilities based local exchange services, including voice and data, in the entire Territory of Guam.⁷ GT also certifies in its petition that it will offer all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act to any requesting customer within its designated service area; GT offers, or will offer, the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services; and GT advertises, or will advertise, the availability of supported services and the charges therefore using media of general distribution.
4. The FCC has indicated that a commitment in the Petition to provide all of the supported services and to advertise using media of general application upon designation as an ETC is sufficient to satisfy the FCC's requirements. The Commission finds that GT must certify to the Commission no later than August 31, 2011 that GT (a) offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act either using its own facilities or a combination of its own facilities and resale and (b) advertises the availability of supported services and the charges therefore using media of general distribution as described in its Petition. The Commission finds that the August 31 due date is necessary to satisfy the need for sufficient time for the Commission to perform a "due diligence" review.
5. With respect to the supported local usage, GT indicates that it "will satisfy the local usage criterion for ETC designation based upon its offering of unlimited local usage calling plans." Consistent with the FCC's rules, the

⁶ 47 U.S.C. §214(e). The FCC has defined the services that are to be supported by the federal universal service support mechanism to include: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. §54.161(a).

⁷ See GT Docket 09-01 (Issuance of a Certificate of Authority to GT) and GT 10-01 (approving GT's General Exchange Tariff #7).

Commission finds that any designation of GT as an ETC be conditioned on GT's compliance with any local usage requirements prescribed by the FCC.

6. With respect to supported access to emergency service, GT indicates that it will offer emergency service and E911 service. It provides its subscribers with access to all and enhanced all through arrangements with the local incumbent exchange carrier, GTA. To the extent a governmental authority in the Territory of Guam implements E911 systems, GT will be required to provide E911 service. Therefore, the Commission finds that any designation of GT as an ETC be conditioned on GT's compliance with any FCC requirements concerning E911 service when implemented in the Territory of Guam.
7. On March 17, 2005, the FCC adopted additional requirements for ETC designation proceedings in which the FCC acts pursuant to 47 U.S.C. §214(e)(6).⁶ All carriers seeking ETC designation from the FCC must satisfy these requirements. The Commission finds that such additional requirements should be used by the Commission in evaluating GT's petition for ETC designation, in the same manner as the Commission found in Docket 06-08 concerning its evaluation of Pulse Mobile's petition for ETC designation.
8. Pursuant to the additional requirements adopted by the FCC in the *ETC Designation Order*, any applicant for ETC designation must:
 - (1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:
 - (A) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes through the potential customer's premises; and
 - (B) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by
 - (1) Modify or replacing the replacing the requesting customer's equipment;
 - (2) Deploying a roof-mounted antenna or other equipment;
 - (3) Adjusting the nearest cell tower;
 - (4) Adjusting network or customer facilities;

⁶ In the matter of *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (released March 17, 2005) (the "*ETC Designation Order*").

(5) Relying services from another carrier's facilities to provide service; or

(6) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. In a particular wire center where improvements are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

- (2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.
 - (3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy requirement. Other commitments will be considered on a case-by-case basis.
 - (4) Demonstrate that it offers a local usage plan comparable to the ones offered by the incumbent local exchange carrier in the service areas for which it seeks designation.
 - (5) Certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.
9. The Commission finds that GT has satisfied all of the additional mandatory requirements set forth in the ETC Designation Order. First, GT has certified that it will provide service throughout the Territory of Guam to all customers making a reasonable request for service in accordance with the FCC's requirements. In this regard, GT has committed that it will notify the Commission within thirty (30) days of any determination that it cannot provide service to a requesting customer in accordance with the

- FCC's requirements. Second, GT has certified that it will have a reasonable amount of back-up power, the ability to reroute traffic and the capability to manage traffic spikes to remain functional in emergency situations. Third, GT has committed to comply with applicable service quality rules, standards, and consumer protection. Fourth, GT has indicated that it will offer a rate plan to its universal service customers that includes unlimited local usage comparable to the rate plan offered by GTA Telecom, LLC. Fifth, GT has certified that it acknowledges that the PUC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.
10. GT has submitted a five-year plan that describes proposed improvements or upgrades to its network, and the estimated amount of investment for each project that is funded by high-cost support. However, because the FCC has recognized that such plans are always subject to change and given FCC precedent for the filing of such plans after ETC designation, the Commission finds that such a detailed build-out plan should be updated by GT following ETC designation as part of its annual filing with the Commission.
 11. For the public interest determination, the *ETC Designation Order* provides that the Commission should consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the ETC applicant's service offering. The Commission believes that GT's universal service offering may provide a variety of benefits to customers in Guam, including consumer choice and advantageous service offerings. For instance, universal service support will help GT construct facilities to improve its coverage to all areas in Guam. In addition, GT has made detailed commitments to provide high quality service throughout the Territory of Guam. Designation of GT as an ETC will advance universal service by bringing consumer on Guam new and advanced telecommunications services which will create increased competitive choice. Finally, given the size of the federal universal service fund, the Commission believes it is unlikely that GT's ETC designation would have an adverse impact of the federal universal service fund.
 12. GT is obligated under Section 254(e) of the Federal Act to use high cost support "only for the provision, maintenance, and upgrading of facilities and service for which support is intended" and is required under Section 54.314 of the FCC's rules to certify annually that it is in compliance with this requirement. GT has certified to the Commission that, "consistent with Section 54.314(b) of the FCC's rules, all federal high-cost support will be used solely for the provision, maintenance and upgrading of facilities and service for which support is intended pursuant to Section 254(e) of the [Federal] Act." The Commission finds that GT should be required to file an annual certification with the Commission in substantially the form required by Section 54.314(b) and (c) of the FCC's rules to verify that GT will use federal high-cost support only for those facilities and services for which the support is intended, regardless of whether the certification

must actually be filed by GT with the USAC and the FCC under Section 54.314(b).

13. In addition, GT has committed to submit to the Commission on an annual basis the following records and documentation, in addition to any other information or reports that the Commission may reasonably request from time to time:

- GT's progress towards meeting its build-out plans;
- Information on any outage lasting at least 30 minutes and potentially affecting either at least 10 percent of the end users serviced or 911 facilities;
- The number of requests for service from potential customers within GT's service area that were unfulfilled for the past year;
- The number of complaints per 1,000 lines;
- GT's compliance with applicable service quality standards and consumer protection rules;
- GT's ability to function in emergency situations;
- GT's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and
- GT's certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other LEC is providing equal access in the service area.


14. The Commission finds that GT must submit these records and documentation to the Commission by August 31 of each year, beginning in 2011. Consistent with FCC requirements: (1) the progress report should detail GT's progress towards meeting GT's five-year service quality improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in such wire center or cell tower for which designation was obtained, and an explanation of why any network improvement targets have not been met; and (2) the information on GT's outages should include the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage and steps taken to prevent a similar outage situation in the future. The Commission finds that GT must provide additional information and reports to the Commission when request therefore is made by the Commission or its staff from time to time.

Order

Based upon the foregoing, the Commission orders that:

- (h) GT must promptly submit to the Commission any additional information or reports that that Commission reasonably request from time to time.
- 2. The Commission reserves the jurisdiction and authority to (a) institute an inquiry on its own motion to examine GT's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the Territory of Guam, (b) revoke GT's BIC designation if it fails to fulfill any requirements of Section 214 of the Federal Act, the FCC's rules and regulations or the Commission's order after GT begins receiving universal service support and (c) assess penalties for violations of the Commission's rules and orders.

Dated this 29th day of November, 2010.



Jeffrey C. Johnson
Chairman



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GT Docket 09-01

APPLICATION OF
 GUAM TELECOM, LLC
 FOR CERTIFICATE OF AUTHORITY
 UNDER 12 G.C.A. §12103

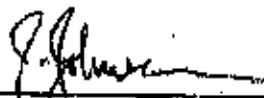
CERTIFICATE OF AUTHORITY

On April 6, 2009, Guam Telecom LLC, a foreign corporation licensed and authorized to do business within the Territory of Guam, filed an application with the Guam Public Utilities Commission [PUC] for issuance of a certificate of authority under 12 GCA 12103 to provide resold local exchange telecommunications services and facilities based local telecommunications services. The application, with supporting documentation, under went review by PUC's Legal Counsel, who reported that Guam Telecom LLC had satisfied the standards set forth in 12 GCA §12103(c) and should, therefore, be issued a certificate, subject to the condition that it files and PUC approves its tariff for these certificated services in accordance with 12 GCA §12106.

After careful review of the application, PUC Legal Counsel's Report, and the record in this docket, which contains Guam Telecom LLC's certificate of public notice of its application in accordance with section three of PUC's Certification Rules and for good cause shown, IT IS HEREBY ORDERED THAT:

1. PUC hereby issues to Guam Telecom LLC a certificate of authority to provide resold and facilities based local exchange services within the Territory of Guam; provided, however that no such service shall be provided until Guam Telecom LLC files and obtains PUC approval of its tariff for said services.
2. This certificate authority is subject to the terms, conditions and requirements of 12 GCA §12103 and to all PUC rules, regulations and orders.
3. All proceedings in this docket are hereby notified and confirmed.

Dated this 28th day of May, 2009.



 Jeffrey C. Johnson
 Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

APPLICATION OF GUAM TELECOM, LLC
FOR CERTIFICATE OF AUTHORITY
UNDER 12 GCA 12103

DOCKET 06-9



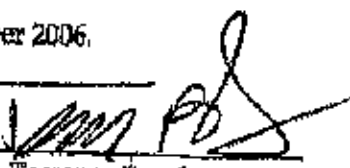
CERTIFICATE OF AUTHORITY

On September 8, 2006, Guam Telecom, LLC [GT], a Delaware limited liability company, which is duly registered as a Guam foreign limited liability company, filed an application with the Guam Public Utilities Commission [PUC] for issuance of a certificate of authority under 12 GCA 12103 to provide facilities-based and resold special access service in the form of private line service on Guam. The application, with supporting documentation, underwent review by PUC's independent consultant [Georgetown], who recommended by report dated October 20, 2006 that GT had satisfied the standards set forth in 12 GCA 12103[e] and should, therefore, be issued a certificate of authority, provided that a) the certificate does not grant GT with the authority to provide switched local exchange services; and b) GT filed corrections and clarifications to its proposed tariff, as discussed in the report. By amended petition filed November 1, 2006, GT so corrected and clarified its proposed tariff.

After careful review of the application and the record herein, which includes GT's certification of public notice of its application in accordance with section 3 of the Commission's Certification Rules, pursuant to the authority delegated to the undersigned by PUC's November 20, 2006 order and for good cause shown, **IT IS ORDERED THAT:**

1. PUC hereby issues to Guam Telecom, LLC a certificate of authority to provide facilities-based and resold special access services in the form of private line service on Guam. This certificate does not authorize GT to provide switched local exchange services.
2. This certificate of authority is subject to the terms, conditions and requirements of 12 GCA 12103 and to all PUC rules, regulations and orders.

Dated this 20 day of November 2006.



 Terrence Brooks
 Chairman



COPY

November 17, 2014

via hand delivery

Mr. John M. Benavente, P.E.
 Interim General Manager
 Guam Power Authority
 P. O. Box 2977
 Agana, GU 96932-2977



Subject: **PROTEST of GPA Invitation for Multi-Step Bid GPA-072-14**

Dear Mr. Benavente:

PDS now files this procurement protest under G.C.A. 5 § 5425(a) regarding the above referenced procurement. PDS has filed this protest in order to call to GPA's attention the following issues related to the Notice of Intent of Possible Award and Bid Status issued to PDS on November 13, 2014 (copy attached as Exhibit 1).

- 1 In the Bid Status included with the GPA letter of November 13, 2014, GPA has recommended award for Telecommunications Services A-3, A-4, A-5 to Docomo Pacific, Inc. However, Docomo Pacific, Inc. lacks proper authorization by the Guam Public Utilities Commission (GPUC) to provide the local Telecommunications services required by GPA as defined in bid specifications A-3, A-4, A-5. Title 12, Chapter 12 of the Guam Code Annotated §12103(a) states in part:

No person shall provide or resell telecommunications service in Guam without a certificate of authority issued by the Commission, except that a certificate of authority shall not be required for any person to provide commercial mobile service.

Title 12, Chapter 12 of the Guam Code Annotated §12102(i) defines "Telecommunications Service" as follows:

"Telecommunications Service" means the offering of telecommunications, between originating and terminating points in Guam, for a fee directly to the General Public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

GPA Bid specifications for items A-3, A-4, A-5 describes Telecommunications Services required to link various GPA locations on Guam using Metro Ethernet



Services. These data connections meet the definition for Telecommunications Services as defined above in 12 GCA §12102(i).

GPA IFB Technical Proposal Section 2.10.1.1.e requires the bidder to provide Regulatory documentation related to the Voice and Data services to be provided to GPA. PDS provided evidence of its Certificate of Authority issued by the Guam Public Utility Commission on September 23, 2005. PDS also provided a copy of its Business License that shows that it is licensed to provide Telecommunication Services on Guam. PDS is fully qualified to provide the required GPA telecommunication services defined for IFB items A-3, A-4, A-5.

Docomo Pacific, inc. does not possess the required GPUC regulatory approval to provide the Telecommunications Services specified by GPA in this procurement. Without the GPUC authorization it would be illegal for Docomo Pacific, Inc. to provide these services to GPA as part of this Bid. As such the award by GPA of IFB items; A-3, A-4, A-5 to Docomo Pacific, Inc. must be rescinded and the award of these items made to the next lowest responsive bidder.

2. In its letter of November 13, 2014, GPA requested that PDS post a Performance Bond equal to 100% of the bid award being made to PDS. PDS has already provided bid security via a bid bond of 15% with its bid as required by 5 GCA § 5212(b). Reference 5 GCA §5212(g) no additional bid security should be required. In light of this information, PDS requests that GPA withdraw its requirement for PDS to post any additional bid security.

GPA is reminded that PDS has filed a timely protest of this procurement and no further action can be taken until this protest has been duly reviewed and an appropriate determination made (5 GCA §5425(g)).

Sincerely,

A handwritten signature in black ink, appearing to read "John Day".

John Day
President

cc: Ms. Jaime L. C. Pangelinan - Supply Management Administrator

Exhibit 1: GPA Notice of Intent of Possible Award dated November 13, 2014



Exhibit 1

GPA Notice of Intent of Possible Award dated November 13, 2014



GUAM POWER AUTHORITY
ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2877 • AGANA, GUAM U.S.A. 96932-2877

November 13, 2014

John Day
President / COO
Pacific Data Systems
185 Illipog Drive, HBC Suite 204A
Tamuning, Guam 96913

**RE: NOTICE OF INTENT OF POSSIBLE AWARD ON INVITATION FOR
MULTI-STEP BID NO.: GPA-072-14 FOR VOICE AND DATA SERVICES**

Dear Mr. Day,

As a result of invitation for Multi-Step Bid No.: GPA-072-14, your bid for the Voice & Data Services for a Three (3) Year Period, for Line Items A-6 and A-7 thru A-13 in the amount of \$164,315.51 is being considered for possible award. However, you are required to provide a PERFORMANCE BOND in the amount of 100% of the Contract Price as specified in Section 12 of the General Terms and Conditions.

You are hereby advised that this Notice of Intent of possible award should not be construed as an award by Guam Power Authority. However, you are requested to submit your Performance Bond on or before fourteen (14) days after receipt of this letter so that consideration of possible award and release of purchase order may be issued. Enclosed is a Performance Bond Form for your perusal.

Your failure to submit the performance guarantee bond by the established deadline will result in delay of the award.

Should you require additional clarification please contact Jamie L.C. Pangelinan, Supply Management Administrator at 648-3054/55.

PLEASE ACKNOWLEDGE RECEIPT BY
SIGNING BELOW AND RETURN THIS FAX
TO MELISSA UNCAINGCO, FAX NO.: 648-3188.

Melissa J. Perez 11/13/2014
PRINTED SIGNATURE DATE

COMPANY

APPRECIATE YOUR IMMEDIATE RESPONSE,
THANK YOU.

GPA PROCUREMENT DIVISION
TEL.: (671) 648-3054/55

Sincerely,

[Signature]
JOHN M. BENAVENTE, P.E.
Interim General Manager

Message Confirmation Report

13-NOV-2014 10:32 THU

WorkCentre M20 Series
 Machine ID : Pacific Data Systems
 Serial Number : RYU412612
 Fax Number : 6713000265

Name/Number : 95483165
 Page : 1
 Start Time : 13-NOV-2014 10:32 THU
 Elapsed Time : 00:34"
 Mode : STD G3
 Results : O.K

NOV 21 2014 15:25 From: 6716483165

Page: 1/1



GUAM POWER AUTHORITY
 ATURIDAD ELEKTRESADAT GUAMAN
 P.O. BOX 2977 - AGANA, GUAM U.S.A. 96932-2977

November 23, 2014

John Day
 President / CEO
 Pacific Data Systems
 108 Airport Drive, HCB Suite 204A
 Tamuning, Guam 96913

**RE: NOTICE OF INTENT OF POSSIBLE AWARD ON INVITATION FOR
 MULTI-STEP BID NO.: GPA-072-14 FOR VOICE AND DATA SERVICES**

Dear Mr. Day,

As a result of invitation for Multi-Step Bid No.: GPA-072-14, your bid for the Voice & Data Services for a Three (3) Year Period for Line Items A-6 and A-7 (TOTAL) in the amount of \$164,012.51 is being considered for possible award. However, you are requested to provide a PERFORMANCE BOND in the amount of 100% of the Contract Price as specified in Section 12 of the General Terms and Conditions.

You are hereby advised that this Notice of Intent of possible award should not be construed as an award by Guam Power Authority. However, you are requested to submit your Performance Bond prior or before fourteen (14) days after receipt of this letter so that consideration of possible award and issuance of purchase order may be issued. Enclosed the Performance Bond Form for your perusal.

Your failure to submit the performance guarantee bond by the established deadline will result in delay of the award.

Should you require additional information please contact Jovita L.C. Mangelhart, Supply Management Administrator at (671) 624-7723.

PLEASE ACKNOWLEDGE RECEIPT BY
 SIGNING BELOW AND RETURN THIS PAGE
 TO: GUAM POWER AUTHORITY, P.O. BOX 2977

John S. Perez 11/19/2014
 PRINTED SIGNATURE DATE

COMPANY

APPRECIATE YOUR IMMEDIATE RESPONSE.
 THANK YOU.

GUAM POWER AUTHORITY'S TELEPHONE
 TEL: (671) 624-2246

Sincerely,

John M. Benavente
 JOHN M. BENAVENTE, P.E.
 Initial General Manager



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 - AGANA, GUAM U.S.A. 96932-2977

November 13, 2014

BID STATUS

John Day
President / COO
Pacific Data Systems
188 Ilipeog Drive, HBG Suite 204A
Tamuning, Guam 96918

MULTI-STEP BID INVITATION: GPA-072-14

OPENED: November 06, 2014

DESCRIPTION: Voice & Data Services

The following is the result of the above-mentioned bid. Refer to items checked below.

- Cancelled (in its entirety), or partially canceled due to:**
 - Insufficient funds;
 - Change of specifications;
 - Best interest of the Government

- Rejected due to:**
 - Late submission of bid
 - No bid security or insufficient bid security amount submitted as required by Section 11 of the General Terms and Conditions;
 - Not meeting the delivery requirements as stated in the IFB;
 - Non-conformance with the specifications;
 - Inability to provide future maintenance and services to the equipment;
 - High price; (Items A-1, A-2, A-3, A-4, and A-5)
 - Others:

Bid is recommended for award to: Docomo Pacific, Inc., Item A-1, A-2, A-3, A-4 and A-5, \$138,400.00 and Pacific Data Systems, Items A-6 and A-7 thru A-13, \$164,315.51.

The Guam Power Authority greatly appreciates the interests and participation in our bids.


JOHN M. BENAVENTE, P.E.
Interim General Manager



GUAM POWER AUTHORITY

ATURIDAT ILEKTRESEDAT GUAMAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96962-2977

BOND NO.: _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that (here insert full name and address or legal title of Contractor) _____ as Principal, hereinafter called, Contractor, and (Bonding Company), called Surety, are held and firmly bound unto the Territory of Guam as Obligee, in the amount of _____ Dollars (\$ _____), for the payment whereof Contractor and Surety bind themselves, their heirs, executor, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____ entered into a contract with the Territory of Guam for (describe project and insert project number) _____ which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract then this obligation shall be null and void, otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension provided the same is within the scope of the contract. Whenever Contractor shall be and is declared by the Territory of Guam to be in default under the Contract, the Territory of Guam having performed territorial obligations there under, the Surety may promptly remedy the default or shall promptly:

1. Complete the Contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Territory of Guam and the Surety jointly of the lowest responsive, responsible bidder, arrange for a contract between such bidder and the Territory of Guam, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph shall mean the total amount payable by the Territory of Guam to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Territory of Guam to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Territory of Guam or successors of the Territory of Guam.

Signed and sealed this _____ day of _____, 20____

(PRINCIPAL) (SEAL)

(WITNESS)

(TITLE)

INSTRUCTIONS TO PROVIDERS:

NOTICE to all Insurance and Bonding Institutions:

The Bond requires the signatures of the Vendor, two (2) major Officers of the Surety and Resident General Agent, if the Surety is a foreign or alien surety.

When the form is submitted to the Guam Power Authority, it should be accompanied with copies of the following:

1. Current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation.
2. Power of Attorney issued by the Surety to the Resident General Agent.
3. Power of Attorney issued by two (2) major Officers of the Surety to whoever is signing on their behalf.

Bonds, submitted as Bid Guarantee, without signatures and supporting documents are invalid and bids will be rejected.

Exhibit 3:

GPA Notice of Possible Award and Bid Status,
November 13, 2014



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

November 13, 2014

John Day
President / COO
Pacific Data Systems
185 Illipog Drive, HBC Suite 204A
Tamuning, Guam 96913

**RE: NOTICE OF INTENT OF POSSIBLE AWARD ON INVITATION FOR
MULTI-STEP BID NO.: GPA-072-14 FOR VOICE AND DATA SERVICES**

Dear Mr. Day,

As a result of Invitation for Multi-Step Bid No.: GPA-072-14, your bid for the Voice & Data Services for a Three (3) Year Period, for Line Items A-6 and A-7 thru A-13 in the amount of \$164,315.51 is being considered for possible award. However, you are required to provide a PERFORMANCE BOND in the amount of 100% of the Contract Price as specified in Section 12 of the General Terms and Conditions.

You are hereby advised that this Notice of Intent of possible award should not be construed as an award by Guam Power Authority. However, you are requested to submit your Performance Bond on or before fourteen (14) days after receipt of this letter so that consideration of possible award and release of purchase order may be issued. Enclosed is a Performance Bond Form for your perusal.

Your failure to submit the performance guarantee bond by the established deadline will result in delay of the award.

Should you require additional clarification please contact Jamie L.C. Pangelinan, Supply Management Administrator at 648-3054/55.

Sincerely,


JOHN M. BENAVENTE, P.E.
Interim General Manager



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

November 13, 2014

BID STATUS

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

MULTI-STEP BID INVITATION: GPA-072-14

OPENED: November 08, 2014

DESCRIPTION: Voice & Data Services

The following is the result of the above-mentioned bid. Refer to items checked below.

- Cancelled (in its entirety), or partially canceled due to:**
 - Insufficient funds;
 - Change of specifications;
 - Best interest of the Government

- Rejected due to:**
 - Late submission of bid;
 - No bid security or insufficient bid security amount submitted: as required by Section 11 of the General Terms and Conditions;
 - Not meeting the delivery requirements as stated in the IFB;
 - Non-conformance with the specifications;
 - Inability to provide future maintenance and services to the equipment;
 - High price; (items A-1, A-2, A-3, A-4, and A-5)
 - Others;

Bid is recommended for award to: Docomo Pacific, Inc., Item A-1, A-2, A-3, A-4 and A-5, \$158,400.00 and Pacific Data Systems, Items A-6 and A-7 thru A-13, \$164,315.51.

The Guam Power Authority greatly appreciates the interests and participation in our bids.


JOHN M. BENAVENTE, P.E.
Interim General Manager

Exhibit 4:

GPA Purchase Order and Contract effective
November 18, 2014



GUAM POWER AUTHORITY

ATURIDAT ILEKTRESEDAT GUAHAN
P.O. BOX 2977 - AGANA, GUAM U.S.A. 96932-2977

ORIGINAL

November 14, 2014

John Day
President/COO
Pacific Data Systems
185 Hippog Drive, HBC Suite 204A
Tamuning, Guam 96913
T: 350-0229
F: 350-0265

REF: Voice & Data Services
(OP NO.: 21059)

Dear Mr. Day:

This is your Notice to Proceed for the above subject Purchase Order Number for the Voice & Data Services.

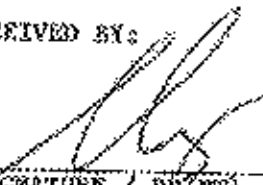
Commencement date for this project is Tuesday, November 18, 2014 and expires December 12, 2014.

Be advised that any changes which may impact the schedule or the value of this order must be noticed to the Supply Management Administrator and approved by the Interim General Manager.

Technical questions are to be directed to Rudy Manibusan, Computer Technician Supervisor, at Telephone No.: 648-3062. All other questions and/or concerns are to be directed to the Supply Management Administrator, Mrs. Jamie L.C. Pengalnan at 648-3064/65 or fax 648-3155.

Sincerely,

RECEIVED BY:



(SIGNATURE / PRINT) 11/18/2014
DATE
John Day



JOHN M. BENAVENTE, P.E.
Interim General Manager

ORIGINAL

Invitation for Multi-Step Bid

No.: GPA-072-14

VOICE AND DATA SERVICE



**WIDE AREA NETWORK (WAN) SITES, MOBILE DATA, VOICE PRI
(TELEPHONE), SIP TRUNKING, AND
PLAIN OLD TELEPHONE SERVICE (POTS)**

Volume II

CONTRACT

| | | |
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CONTRACT

PACIFIC DATA SYSTEMS

GUAM POWER AUTHORITY

2014

IFB No. GPA-072-14

VOICE AND DATA SERVICE

FORMAL CONTRACT

This Agreement and Formal Contract ("Contract"), is made and entered into on the 18th day of November 2014 by and between **Pacific Data Systems**, hereinafter referred to as **CONTRACTOR**, with its principal address at 185 Iliog Drive, HBC Suite 204A, Tamuning, Guam 96913;

- and -

GUAM POWER AUTHORITY, hereinafter referred to as the "**Authority**" or "**GPA**", a Public Corporation with its office located at 1911 Army Drive, Harmon, Guam, 96913;

RECITALS

WHEREAS, GPA seeks to procure a new Voice and Data Contractor for the supply Wide Area Network (WAN) Sites, Mobile Data, Voice PRI (Telephone), SIP Trunking, and Plain Old Telephone Service (POTS) to the GPA locations listed in Schedule A; and

WHEREAS, GPA has issued an Invitation For a Multi-Step Bid to Supply Wide Area Network (WAN) Sites, Mobile Data, Voice PRI (Telephone), SIP Trunking, and Plain Old Telephone Service (POTS) under IEB GPA-072-14; and

WHEREAS, CONTRACTOR submitted a bid in response to the invitation for Bid to Supply Wide Area Network (WAN) Sites, Mobile Data, Voice PRI (Telephone), SIP Trunking, and Plain Old Telephone Service (POTS); and

WHEREAS, GPA, upon evaluation of the submitted bid proposals, determined that CONTRACTOR is the lowest responsive and responsible bidder.

WHEREAS, the Consolidated Commission on Utilities has determined that the (CONTRACTOR) is a preferred option for GPA to Supply Wide Area Network (WAN) Sites, Mobile Data, Voice PRI (Telephone), SIP Trunking, and Plain Old Telephone Service (POTS) requirements for the Authority; and

NOW, THEREFORE, in consideration of the above premises and the mutual promises set forth herein and the terms and conditions hereinafter set forth and for other good and valuable consideration, receipt of which is hereby acknowledged; CONTRACTOR and GPA hereby agree as follows:

SECTION 1. DEFINITIONS

- "\$" The term "\$" refers to currency in U.S. dollars.
- "WAN" The term "WAN" shall mean Wide Area Network.
- "POTS" The term "POTS" shall mean Plain Old Telephone Service.
- "Metro Ethernet" Refers to a star network or mesh network topology with individual routers or servers interconnected through cable or fiber optic media that offers cost-effectiveness, reliability, scalability, and bandwidth management superior to most proprietary networks.
- "Mbps" The term "Mbps" means Megabits per second, used to measure data transfer

speeds equivalent to one million bits per second.

- "Contract"** The term "Contract" means the Voice and Data Contract executed as a result of IFB GPA-072-14.
- "Contract Agreement (Agreement)"** The written agreement between GPA and CONTRACTOR covering the Supply of Wide Area Network (WAN) Sites, Mobile Data, Voice PRI (Telephone), SIP Trunking, and Plain Old Telephone Service (POTS) and any other Contract Documents either attached to the Agreement or made a part thereof by reference therein.
- "Contract Documents"** The Contract Agreement, Bonds (where required), these General Conditions, any Supplementary Conditions, the Specifications, and any other documents specifically identified in the Contract Agreement, together with all Modifications issued after execution of the Contract Agreement.
- "Contracting Officer"** The term "Contracting Officer" as used herein means the General Manager of the Guam Power Authority and shall include his authorized representatives.
- "CONTRACTOR"** The term "CONTRACTOR" as used herein means the party or parties who or which shall have duly entered into a contract with the Guam Power Authority to perform the work herein contemplated or his or their authorized assignee.
- "Day"** A calendar day of twenty-four (24) hours measured from midnight to the next midnight.
- "Delivery Time"** The total number of days or the dates stated in the Agreement for furnishing the product.
- "General Manager"** The General Manager is the Chief Executive Officer of the Guam Power Authority. The office and title of General Manager shall apply to any person acting in a regular or in an acting capacity as the Chief Executive Officer of the Guam Power Authority.

"Notice" The term "Notice" as used herein shall mean and include all written notice demands, instructions, claims, approvals and disapprovals required to obtain compliance with contract requirements. Any written notice by either party to the contract shall be sufficiently given if delivered to or at the last known business address of the person, firm, or corporation constituting the other party to the contract, or to his, their, or its duly authorized agent, representative, or officers, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mail box and file the same with the Contracting Officer.

"Procurement Officer" The General Manager of the Guam Power Authority or the General Manager's designee.

"PURCHASER" The Guam Power Authority with whom CONTRACTOR has entered into the Contract Agreement.

"Seller" The CONTRACTOR.

"Territory" The Territory of Guam.

"Analog" means a voice circuit made from copper wire that runs from the phone company's Central Office (C.O.) building to the business location.

"Plain Old Telephone Service (POTS)" refers to voice grade telephone service that is based on analog signal transmission.

"Asymmetric" means not identical.

"Redundancy" refers to the repetition of lines connecting to the network.

"Latency" refers to

"NOC" refers to "Network Operations Control Center"

"MTTR" refers to "Mean Time to Repair"

"SIP Trunking" refers to Session Initiation Protocol (SIP) that is a signal communication protocol used to control Voice over Internet Protocol (VoIP) and streaming media services.

"Voice PRI (Telephone)" refers to Voice over Internet Protocol (VoIP) and streaming media services delivered over Internet Protocol (IP) networks such as the internet.

"Mobile Data" refers to high speed internet data over a mobile broadband connection.

"PRI" refers to "Primary Rate Interface" which is the standard for providing telecommunication services to offices using a T-carrier (T1) line that consists of 24 channels. T-1 lines can have up to 1.544 Mbps service.

SECTION 3. VOICE AND DATA TO BE SUPPLIED

CONTRACTOR agrees to furnish and **GPA** agrees to accept and pay for all of **GPA's** Voice and Data requirements for all **GPA** sites listed on **Schedule A - Ethernet and Communication Services** for the term of the Contract. The estimated total Voice and Data requirement is listed in **Schedule A - Ethernet and Communication Services** and is subject to change. **GPA** shall reasonably notify the Contractor for any changes in the voice and data service requirements.

The first delivery of voice and data service pursuant to the Contract is anticipated to be on or about **December 2014**.

SECTION 3. CONTRACT TERM

The Contract Term shall be for three (3) years to commence on November 18, 2014 and shall continue until midnight of November, 2017 and with GPA's option to extend the contract for two (2) additional one (1) year term, renewable annually, with mutual agreement of both parties.

SECTION 4. CONTRACT PRICE

The Contract price in U.S. dollars per service category (\$/service category) for all voice and data service delivered to GPA shall be inclusive of all costs and liabilities required to fulfill the contract. The **BID PRICE** is the sum of the **FIXED SERVICE FEE**.

BID REFERENCE PRICE

The contract price shall be the price indicated in the "BID PRICE".

BID PRICES:

Bid prices must be provided for each location listed in Schedule A.

A. MANDATORY BID: Ethernet and Communications Services

Quality must comply with the specifications listed in Schedule A.

| (Amended) | | | | Voice and Data Service | | | | |
|----------------------------------|---|-----------------------|-----|------------------------|----------|----------|----------------------------|--------------|
| Description | Location | Service | QTY | 3 Year Base Period | | | 2-3 Year Extension Options | |
| | | | | 1st Year | 2nd Year | 3rd Year | 1st Year Est | 2nd Year Est |
| WAN Sites* | Harrison Main Office to ISP (Internet) | 30Mbps Metro Ethernet | 1 | | | | | |
| | T & D Compound to Fadian | 10Mbps Metro Ethernet | 1 | | | | | |
| | Cobras Compound to Fadian | 10Mbps Metro Ethernet | 1 | | | | | |
| | Jules Customer Services | 5Mbps Metro Ethernet | 1 | | | | | |
| | Tenjo Diesel Power Plant** | 5Mbps Metro Ethernet | 1 | | | | | |
| | Agana Substation** | 5Mbps Metro Ethernet | 1 | | | | | |
| | Talefofa Diesel Substation*** | 5Mbps Metro Ethernet | 1 | | | | | |
| | Agfa Heights Substation*** | 5Mbps Metro Ethernet | 1 | | | | | |
| | Portis Junction Power Pole, R/S Milehigh Dr.*** | 5Mbps Metro Ethernet | 1 | | | | | |
| | Umatac Substation*** | 5Mbps Metro Ethernet | 1 | | | | | |
| | Yigo Substation*** | 5Mbps Metro Ethernet | 1 | | | | | |
| | Macheche Substation to Fadian** | 10Mbps Metro Ethernet | 1 | | | | | |
| | Fadian Facility (New Facility) to ISP (Internet) | 30Mbps Metro Ethernet | 1 | | | | | |
| Mobile Data* | Various | 4G | 4 | | | | | |
| Voice - Telephone* | Harrison Main Office | PU | 3 | | | | | |
| DID Direct Inward Dial Numbers | Direct Inward Calling Numbers (inclusive of Existing DID numbers) | DID | 700 | | | | | |
| Voice - Telephony* | T&D Compound | PI | 1 | | | | | |
| | Cobras Compound | PI | 1 | | | | | |
| | Fadian Facility (New Facility) | PI | 3 | | | | | |
| SIP Trunking* | Harrison Main Office | SIP | 2 | | | | | |
| | Fadian Facility (New Facility) | SIP | 2 | | | | | |
| Plain Old Phone Services (POTS)* | Harrison Main Office | Analog | 12 | | | | | |
| Main Old Phone Services (POTS)* | T&D Compound | Analog | 7 | | | | | |
| | Cobras Compound | Analog | 12 | | | | | |
| | Tenjo Diesel | Analog | 1 | | | | | |
| | Hagafna (Jules) Customer Services | Analog | 1 | | | | | |
| | Fadian Facility (New Facility) | Analog | 12 | | | | | |

*Items above will be awarded per service-per location

*GPA has the option adjust amounts/quantities if necessary.

*All Hammon Main Office Lines are Temporary (will terminate upon of completion of relocation to Padina)

** Layer 3 Required

** Layer 2 Preferred

INVOICE PRICE CALCULATION FORMULA

INVOICE PRICE = Set Price + Increase in Service Price

Sample data and calculation:

Delivery Quarter: 1st quarter 2015

(1) Reference Price:

Reference Price = Ethernet and Communications Services
Hammon Main Office to ISP (20Mbps Metro Ethernet) 1 = \$200 (sample price)

(2) Sample Service increase:

Fixed Service Fee = \$10 per Mbps (sample price)

(3) Invoice Price

Invoice Price = Reference Price + Fixed Service Fee

Invoice Price = (\$200 + \$10 per Mbps @ 10 Mbps) (sample price)

Invoice Price = \$300 (sample price)

This is the invoice price data service delivered to GPA for the sample quarter.

SECTION 5. TERMS OF PAYMENT

Invoices for voice and service delivered pursuant to quantity and quality prescribed under the terms of this contract shall be submitted no more frequently than quarterly, based on the voice and data delivered to GPA during the preceding period. The payment terms are 30 days (net) beginning on the date the invoice is received by the GPA accounts payable section. All payments shall be based on the delivered quantity and quality of service.

SECTION 6. WARRANTY AND CLAIMS

CONTRACTOR warrants that the voice and data shall meet the specification prescribed herein under Section 7 and other pertinent sections. If the voice and data service fails to meet the specifications herein, **CONTRACTOR** shall be liable for any direct damages resulting therefrom.

CONTRACTOR shall be solely responsible for any damages caused by the **CONTRACTOR** or its agents during the process of voice and data service delivery.

Claims against the **CONTRACTOR** for direct costs incurred on account of their negligent actions shall be given in writing together with all supporting documents, invoices and correspondence by **GPA** within thirty days (30) from invoice receipt date.

SECTION 7. PRODUCT AND QUALITY

CONTRACTOR must provide a Service Level Agreement that will address guaranteed response times, escalation procedures and the terms for any refunds/credits:

- I. That may be due for failure to meet this agreement and requirements:

The terms of the Service Level Objectives shall minimally address:

- i. Network Availability of 99.999%
- ii. Packet delivery rate of 99.99%
- iii. Network Latency of 10ms round trip
- iv. Mean Time to Repair (MTTR) 4 hours

SECTION 8. QUANTITY AND QUALITY ASSURANCE

In the event of a dispute over the quality of the voice and data services received by **GPA**, an inspection of the voice and data will be conducted by an appointed third party inspector mutually acceptable to **GPA** and the **CONTRACTOR**.

SECTION 9. GOVERNMENT LAWS AND REGULATIONS

(a) **CONTRACTOR** shall at all times comply with all applicable laws and regulations of the Territory of Guam and the Federal Government and their respective agencies.

SECTION 10. PERMITS AND RESPONSIBILITIES

The **CONTRACTOR** shall, without additional expense to **GPA**, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal and Territorial laws, codes and regulations necessary for performance of the Contract by **CONTRACTOR**.

SECTION 11. GOVERNING LAW AND DISPUTES

- (a) All controversies between **GPA** and the **CONTRACTOR** which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by **GPA** pursuant to Guam Procurement laws and regulations.
- (b) **CONTRACTOR** may pursue applicable remedies under the Guam Procurement Law and regulations and the Government Claims Act.
- (c) The **CONTRACTOR** shall comply with any decision of **GPA** and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract; provided, however, that in any event the **CONTRACTOR** shall proceed diligently with the performance of the Contract where the General Manager of **GPA** has made a written determination that continuation of work under the Contract is essential to the welfare of the territory.

This Contract is made under, and shall be governed and construed in accordance with, the laws, statutes and regulations of the Territory of Guam, to the exclusion of all other legal systems. Wherever a term defined by the Uniform Commercial Code is used in the Contract the definition contained in the Uniform Commercial Code of Guam will control, unless otherwise specified.

The parties expressly submit to the jurisdiction of the Superior Court of the Territory of Guam, for the resolution of any dispute or difference or claims between the parties in connection with the Contract, and to service of process by registered mail. The **CONTRACTOR** agrees to accept the jurisdiction of the Superior Court of the Territory of Guam for the resolution of any claims including but not limited to, claims for consequential, special or punitive damages. Judgment upon any award rendered by the Superior Court of the Territory of Guam may be entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. The

CONTRACTOR waives all rights against GPA to claim consequential, special or punitive damages.

SECTION 12. CONTRACTOR'S INSURANCE

Contractor shall not commence work under this contract until he has obtained all insurance required under this section and such insurance has been approved by GPA, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained and approved.

A. WORKMEN'S STATUTORY COMPENSATION INSURANCE AND

EMPLOYER'S LIABILITY INSURANCE: The Contractor shall take out and maintain during the life of this Contract the applicable statutory Workmen's Compensation Insurance with an insurance company authorized to write such insurance and in the applicable State or Territory covering all his employees, and in the case of any work subcontract, the Contractor shall require the Subcontractor similarly to provide statutory Workmen's Compensation Insurance for the latter's employees. The Contractor shall secure and maintain, during the life of this Contract, Employer's Liability Insurance with a limit of \$500,000 with an insurance company authorized to write such insurance in all states or territories where the Contractor will have employees located in the performance of this Contract. Contractor shall provide a Waiver of Subrogation in favor of GPA via endorsement to the Workers Compensation policy.

B. COMMERCIAL GENERAL LIABILITY:

1. The Contractor shall maintain, during the life of this Contract, such Commercial General Liability as shall protect him against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, which may arise from operations under this Contract whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided Liability Insurance shall be as follows:

| | |
|-------------------------|------------------------------|
| Bodily Injury Limits: | \$ 1,000,000 Each Person |
| Property Damage Limits: | \$ 1,000,000 Each Occurrence |

§ 2,000,000 Aggregate

2. The Commercial General Liability required by the preceding Subparagraph 1 shall include the following extensions of coverage.

- (a) The property damage coverage shall include a Broad Form Property Damage Endorsement.
- (b) Contractual Liability coverage shall be included.
- (c) Protective Liability coverage shall be included to protect the Contractor against claims arising out of operations performed by his Subcontractors.
- (d) Products Liability and/or Completed Operations coverage shall be included.
- (e) CPA shall be an additional insured on Commercial General Liability policy.
- (f) Contractor shall grant Waiver of Subrogation in favor of CPA.

C. AUTOMOBILE LIABILITY INSURANCE:

The Contractor shall take out and maintain during the life of the Contract, such Automobile Liability insurance as shall protect him against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, which may arise from the operations of any owned, hired or non-owned automobiles used by or for him in any capacity in connection with the carrying out of this Contract. CPA shall be an additional insured on Auto Liability policy. Contractor will grant Waiver of Subrogation in favor of CPA. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

| | |
|-------------------------|------------------------------|
| Bodily Injury Limits: | \$ 1,000,000 Each Person |
| | \$ 1,000,000 Each Occurrence |
| Property Damage Limits: | \$ 1,000,000 Each occurrence |

D. EXCESS LIABILITY

Excess Liability with limits of \$5,000,000. GPA shall be an additional insured. Contractor shall grant Waiver of Subrogation in favor of GPA.

E. CERTIFICATE OF INSURANCE:

The Contractor shall furnish GPA with two (2) copies of a Certificate of Insurance evidencing policies required in Paragraphs B, C, D, E, and F above. Such certificates shall specifically indicate that the Commercial General Liability Insurance includes all extensions of coverage required in Paragraph C., Subparagraph 2. above. Such certificate shall specifically state that the insurance company or companies issuing such insurance policies shall give GPA at least thirty (30) days written notice in the event of cancellation of or material change in any of the policies. If coverage on said certificate(s) is shown to expire prior to completion of all terms of this Contract, the Contractor shall furnish a Certificate of Insurance evidencing renewal of such coverage to GPA. The Certificate of Insurance shall clearly show this Contract number.

The Contractor shall provide a copy of their Insurance Policy to GPA as part of the bid requirements. All updates or revisions after contract commencement shall also be forwarded to GPA.

F. SUBCONTRACTOR'S INSURANCE:

The Contractor shall require each of his Subcontractors to take out and maintain during the life of his Subcontract, the same insurance coverage required of the Contractor under Paragraphs B, C, D, E, and F above, including the extensions of coverage required under Paragraph C., Subparagraph 2. above. Each Subcontractor shall furnish to the Contractor two (2) copies of a Certificate of Insurance and such certificate shall contain the same information required in Paragraph C. above. The Contractor shall furnish one (1) copy of the certificate to GPA.

G. INSURANCE COMPANY AND AGENT:

All insurance policies herein required of the Contractor shall be written by a company duly authorized to do business in the Territory where service under this Contract is being performed and be executed by some agent thereof duly licensed as an agent in said State or Territory.

SECTION 13. FAILURE TO SUPPLY

If the **CONTRACTOR** refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure the timely delivery of voice and data services or commits any other substantial breach of this Contract, **GPA** may notify the **CONTRACTOR** in writing of the delay or non-performance and if not cured within **THIRTY (30)** days of the date of notification, **GPA** may terminate the Contract in whole or such part of the Contract as to which there has been a delay or a failure to properly perform. In the event of termination in whole or in part, **GPA** reserves the right to procure voice and data services from another source immediately upon issuance of such notification or whenever it deems appropriate.

SECTION 14. FAILURE TO PAY

Failure to pay an invoice and any late penalties, if any, within a period of **THIRTY (30)** days from the due date of such invoice, shall be a default and should such a default not be cured within **THIRTY (30)** days of default, **CONTRACTOR** may, at its option, do either of the following:

- (a) Terminate the Contract forthwith or forthwith suspend delivery under the contract until further notice, on notifying **GPA** orally or by notice in writing; or
- (b) Continue to supply voice and data service and bring suit in the Superior Court of Guam for amounts past due and as they become due.

SECTION 15. FAILURE TO COMPLY WITH LAWS

In the event the **CONTRACTOR** or any person or entity identified as principals in the offer submitted in connection with the bid shall be found by any court or administrative agency having jurisdiction over the subject matter of the violation, to have violated any law, rule or regulation in connection with **CONTRACTOR**'s performance of the obligations under the Contract in any manner whatsoever directly or indirectly which violation shall constitute a breach of the peace, or an act involving moral turpitude or otherwise constitute endangerment of the health, safety and welfare of the citizens of the Territory of Guam, **GPA** may at its sole discretion terminate this Contract upon **THIRTY (30)** days written notice.

SECTION 16. DEFAULT

If the PARTY refuses or fails to perform any of their obligations under this agreement, non-breaching PARTY shall notify the PARTY either by e-mail or in writing within thirty (30) days of the breach. If the PARTY does not remedy the breach within thirty (30) days after the date of notification, non-breaching PARTY may by giving notice to the other PARTY terminate the Agreement in whole or suspend taking of delivery under the Contract.

In the event of partial termination or suspension under this provision, GPA reserves the right to procure voice and data services from another source upon notification to CONTRACTOR either by e-mail or in writing.

In the event of termination because of GPA's default, the CONTRACTOR shall not be liable for the difference between the contract price and the prevailing market price at the time of termination.

SECTION 17. ATTORNEYS FEES

Should a default by either party result in litigation, the successful party shall be entitled to recover its reasonable attorney's fees from the defaulting party.

SECTION 18. TERMINATION FOR CONVENIENCE

(a) Termination.

The delivery of voice and data services under this Contract may be terminated by GPA in accordance with this clause in whole, or from time to time in part.

Any such termination shall be effected by delivery to the CONTRACTOR of a written Notice of Termination specifying the extent to which voice and data services under the Contract is terminated, and the Contract shall be terminated effective THREE HUNDRED SIXTY (360) days after receipt of notice by CONTRACTOR.

(b) CONTRACTOR's Obligations.

The **CONTRACTOR** shall incur no further obligations in connection with the voice and data services and on the date set in the Notice of Termination the **CONTRACTOR** will stop delivery of voice and data services to the extent specified. The **CONTRACTOR** shall also terminate outstanding orders and Contracts, if any, as they relate to the terminated Contract for voice and data services. The **CONTRACTOR** shall settle the liabilities and claims arising out of the termination of orders and Contracts, if any, connected with the terminated voice and data services. **GPA** may direct the **CONTRACTOR** to assign the Contractor's right, title and interest under the terminated orders or Contracts to **GPA**. The **CONTRACTOR** must still deliver voice and data services not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

(c) Compensation.

- (1) The **CONTRACTOR** shall submit a termination claim specifying the amounts due because of the termination for convenience. If the **CONTRACTOR** fails to file a termination claim within ONE (1) year from effective date of termination, **GPA** may pay the **CONTRACTOR**, if at all, an amount set in accordance with subparagraph (3) of this paragraph.
- (2) **GPA** and the **CONTRACTOR** may agree to a settlement provided the **CONTRACTOR** has filed a termination claim supported by cost or pricing data to the extent required by Section 3-402 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by **GPA**, the proceeds of any sales of supplies and manufacturing materials under the Guam Uniform Commercial Code, and the Contract price of the voice and data services not terminated.
- (3) Absent complete agreement under subparagraph (1) of this paragraph, **GPA** may pay the **CONTRACTOR** the following amounts, provided payments agreed to under subparagraph (2) shall not duplicate payments under this subparagraph:
 - (i) Voice and data service Contract prices accepted under the Contract by **GPA**;
 - (ii) Costs incurred in preparing to perform and performing the terminated portion of the delivery of voice and data services;

(iii) Costs of settling and paying claims arising out of the termination of Contracts or orders pursuant to paragraph (2) of this clause. These costs must not include costs paid in accordance with subparagraph (3)(ii) of this paragraph;

(iv) The reasonable settlement costs of the **CONTRACTOR** including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract for the termination and settlement of Contracts thereunder, together with reasonable costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the **CONTRACTOR** under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the **CONTRACTOR** reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under the Uniform Commercial Code.

SECTION 19. REMEDIES CUMMULATIVE

Each and all remedies available to a party in the event of the other party's failure to comply timely with any or all the terms and conditions of the Contract may be exercised independently or in combination (such rights being nonexclusive one with the other). The remedies set forth in the Contract are in addition to, and not in lieu of, all of the remedies available at law or in equity.

SECTION 20. COVENANT AGAINST CONTINGENT FEES

The **CONTRACTOR** warrants no person or selling agency has been employed or retained to solicit or secure the Contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agency maintained by the **CONTRACTOR** for the purpose of securing business. For breach or violation of this warranty, GPA shall have the right to annul the Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

SECTION 21. NOTICE

Except as otherwise expressly specified herein, any notice to be given hereunder by either party to the other shall be deemed sufficiently given if in writing and enclosed in an envelope properly stamped and addressed to the party at the address set forth in this section, and deposited in the United States mail. Either party may change its address by giving FIFTEEN (15) days prior written notice to the other party. Such address until further notice shall be:

GPA: **JOHN M. REKAVENTE, P.E.**
Interim General Manager
Guam Power Authority

Post Office Box 2977
Hagatna, Guam 96932 - 2977
TELEFAX: (671) 648-9225

CONTRACTOR: **JOHN DAY**
President / COO
Pacific Data Systems
185 Ulipog Drive, HMC Suite 204A
Tamuning, Guam 96913

SECTION 22. INTEREST OF OTHER PARTIES

CONTRACTOR warrants that no member of the governing body of **GPA**, and no other officer, employee, or agent of **GPA** who exercises any functions or responsibilities in connection with the work to which the Contract pertains, and no employee, agent or member of the Guam Legislature or other public official of the Government of Guam, has or shall have any personal economic or financial interest, direct or indirect, in the Contract.

SECTION 23. ASSIGNMENT

CONTRACTOR declares that the only persons or parties interested in the Contract as principals are named herein and that the Contract is made without participation by or benefit to any other person, firm or corporation, except as specified herein.

CONTRACTOR agrees that it will not assign to nor permit Contract participation in whole or in part by any other person, firm or corporation not specified as a principal without the prior written consent of **GPA**. If such assignment is permitted, **CONTRACTOR** will guarantee the performance of all terms and obligations of the Contract, and such assignment shall not alter **CONTRACTOR's** obligations hereunder. No assignee of **CONTRACTOR** shall have the right to assign the Contract without **GPA's** consent which may be given or refused at **GPA's** absolute discretion.

CONTRACTOR and **GPA** shall not transfer or assign its rights and obligations under this contract, in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, the **CONTRACTOR** may transfer or assign its rights and obligations under this contract, in whole or in part, to a US based affiliate (as defined hereinafter), with ninety (90) days prior notice to and at the consent of **GPA**. For the purpose of this contract, "US based affiliate" means any company or legal entity based in the United States of America which (a) controls either directly or indirectly a party hereto, or (b) is controlled directly or indirectly by such party, or (c) is directly or indirectly controlled by a company or entity which directly or indirectly controls such party. "Control" for purposes of the previous sentence means the ability to direct the management and policies of a company or legal entity, whether through ownership of securities, by contract or otherwise.

SECTION 24. TIME

Time is of the essence in the Contract and in every part hereof.

SECTION 25. AMENDMENT AND WAIVER

Neither the Contract nor any provision hereof may be changed, waived, altered, amended, discharged or terminated orally, but only by an instrument in writing signed by the party against

whom enforcement of the change, waiver, alteration, amendment, discharge or termination is sought. For purposes of this Contract, the signature of the Chairman or his designee, of the Consolidated Commission on Utilities is required to bind the **AUTHORITY**.

Failure by either party to object to any failure of performance by the other party of any provision of the Contract shall not constitute a waiver of, or estoppel against, the right of such party to require such performance by the other. Nor shall any such failure to object constitute a waiver or estoppel with respect to any succeeding failure of performance.

SECTION 26. DESCRIPTIVE HEADINGS

The descriptive headings of the several Sections and Subsections in this Invitation are inserted for convenience only and shall not be deemed to affect the meaning or construction of any provision hereof.

SECTION 27. RELATIONSHIP OF PARTIES

Nothing contained in the Contract shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between **CONTRACTOR** and **GPA**, and no provisions contained in the Contract nor any acts of the parties shall be deemed to create any relationship between **GPA** and **CONTRACTOR**, other than the relationship of buyer and seller.

SECTION 28. NUMBER AND GENDER

In the Contract the masculine gender includes the feminine and neuter, the singular number includes the plural, and the word "person" includes corporation, partnership, firm or association wherever the context so requires.

SECTION 29. SUCCESSORS IN INTEREST

Each and all of the covenants, conditions, and restrictions in the Contract shall inure to the benefit of and shall be binding upon the permitted assignees and successors in interest of either party.

SECTION 30. PARTIAL INVALIDITY

Should any part of the Contract for any reason be declared to be invalid, such decision shall not affect the validity of any remaining portion thereof, which remaining portion shall remain in force and effect as if the Contract had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of the Contract without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid.

SECTION 31. EQUAL OPPORTUNITY CLAUSE

During the performance of the Contract the **CONTRACTOR** agrees as follows:

(a) The **CONTRACTOR** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, political opinion or affiliation, or national origin. The **CONTRACTOR** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, political opinion or affiliation, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demoting, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The **CONTRACTOR** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the **GPA** setting forth the provisions of this equal opportunity clause.

(b) The **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of the **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, political opinion or affiliation, or national origin.

SECTION 32. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS TO THE TERRITORY.

GCA 5 §5030(c) prohibits the **CONSULTANT** against gratuities, kickbacks, and favors to the Territory.

SECTION 33. RESTRICTIONS AGAINST CONTRACTOR EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES

GCA 5 §5253(b) restricts the CONTRACTOR against employing convicted sex offenders from working at Government of Guam venues. It states:(b) All contracts for services to agencies listed herein shall include the following provisions: (1) warrants that no person providing services on behalf of the CONTRACTOR has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the CONTRACTOR is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

SECTION 34. CONTRACT BINDING EFFECT

All EXHIBITS attached hereto are incorporated herein by reference in its entirety.

This Contract is binding upon the CONTRACTOR only if CONTRACTOR has been awarded the Contract in response to the IFS-GPA-072-14. This Contract is subject to the approval of GPA and the Public Utilities Commission and it shall not be binding on part of GPA until such approval is made as evidenced by the signatures below.

For the Guam Power Authority (GPA):

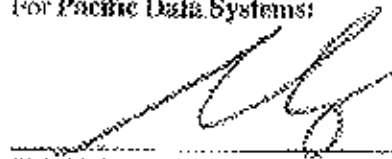


JOHN M. BERNAVENTE, P.E.
Interim General Manager



DATE

For Pacific Data Systems:



JOHN DAY
President / COO

11/17/2014
DATE

APPROVED AS TO FORM:



Graham Botha, Legal Counsel
GUAM POWER AUTHORITY

11/17/14
DATE

SCHEDULE A

Ethernet and Communications Services (Amended)

| Description | Location | Service | Qty | Completion Date |
|----------------------------------|---|-----------------------|-----|-----------------|
| WAN Sites* | Harmon Main Office to ISP (Internet) | 30Mbps Metro Ethernet | 1 | 12/12/2014 |
| | T & D Compound to Padjar | 10Mbps Metro Ethernet | 1 | 12/19/2014 |
| | Cabras Compound to Padjar | 10Mbps Metro Ethernet | 1 | 12/26/2014 |
| | Julala Customer Services | 5Mbps Metro Ethernet | 1 | 12/19/2014 |
| | Tanjo Diesel Power Plant*** | 5Mbps Metro Ethernet | 1 | 12/12/2014 |
| | Agung Substation*** | 5Mbps Metro Ethernet | 1 | 12/12/2014 |
| | Talofoto Diesel/Substation*** | 5Mbps Metro Ethernet | 1 | 12/12/2014 |
| | Apes Heights Substation*** | 5Mbps Metro Ethernet | 1 | 12/12/2014 |
| | Potts Junction Power Pole, R3 Mabola Dr.*** | 5Mbps Metro Ethernet | 1 | 1/16/2015 |
| | Umatac Substation*** | 5Mbps Metro Ethernet | 1 | 12/12/2014 |
| | Yigo Substation*** | 5Mbps Metro Ethernet | 1 | 12/12/2014 |
| | Machesno Substation to Padjar** | 30Mbps Metro Ethernet | 1 | 12/12/2014 |
| | Padjar Facility (New Facility) to ISP (Internet) | 30Mbps Metro Ethernet | 1 | 12/12/2014 |
| Mobile Data* | Various | 4G | 4 | 12/5/2014 |
| DID Direct Inward Dial Numbers | Direct Inward Dialing Numbers (exclusive of Existing DID numbers) | DID | 700 | 12/12/2014 |
| Voice - Telephone* | Harmon Main Office | PRI | 3 | 12/12/2014 |
| Voice - Telephone* | T&D Compound | PRI | 1 | 12/26/2014 |
| | Cabras Compound | PRI | 1 | 12/12/2014 |
| | Padjar Facility (New Facility) | PRI | 3 | 12/12/2014 |
| | | | | |
| SIP Trunking* | Harmon Main Office | SIP | 2 | 12/12/2014 |
| | Padjar Facility (New Facility) | SIP | 2 | 12/12/2014 |
| Plain Old Phone Services (POTS)* | Harmon Main Office | Analog | 15 | 1/16/2015 |
| Plain Old Phone Services (POTS)* | T&D Compound | Analog | 7 | 1/16/2015 |
| | Cabras Compound | Analog | 10 | 1/16/2015 |
| | Tanjo Diesel | Analog | 1 | 1/16/2015 |
| | Hagatna (Julala) Customer Services | Analog | 4 | 1/16/2015 |
| | Padjar Facility (New Facility) | Analog | 13 | 12/13/2014 |
| | | | | |

* Items above will be awarded per service-per location

*GPA has the option adjust amounts/quantities if necessary.

*All Harmon Main Office Lines are Temporary (will terminate upon of completion of relocation to Padjar)

** Layer 2 Required

NO "Layer 2 Preferred

SCHEDULE A: QUALITY

CONTRACTOR must provide a Service Level Agreement that will address guaranteed response times, escalation procedures and the terms for any refunds/credits:

- i. That may be due for failure to meet this agreement and requirements

The terms of the Service Level Objectives shall minimally address:

- ii. Network Availability of 99.999%
- iii. Packet delivery rate of 99.99%
- iv. Network Latency of 10ms round trip
- v. Mean Time to Repair (MTTR) 4 hours

MELISSAU *MLL*

PURCHASE ORDER

GUAM POWER AUTHORITY
P.O. Box 2977
Hagatna, Guam 96932

THIS PURCHASE ORDER NUMBER

No. 21059 OP

MUST APPEAR ON ALL INVOICES,
PACKING SLIPS, PACKAGES, B/L,
CORRESPONDENCE, ETC.

ORIGINAL

TELEPHONE: (671) 648-3034/5
FAX: (671) 648-3163

PO DATE

11/13/14

JOB ORDER NO./JOB

31700.021000.39

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PACIFIC DATA SYSTEMS

185 Hippog Drive
Suite 204A

Tamuning, GU 96913

TEL: (671) 300-0200

FAX: (671) 300-0285

VENDOR

5991

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RECEIVING SECTION:

GUAM POWER AUTHORITY

P.O. BOX 2977

HAGATNA, GUAM 96932

TELEPHONE: (671) 648-3054/8

Facilities Management

ALTERNATE

INVITATION NO.

CONTRACT NO.

TIME FOR DELIVERY

EXPIRING

DISCOUNT TERMS:

30%

MS GPA-072-14

C-072-14

SEE

BELOW

DESCRIPTION / SUPPLIER ITEM

QTY UNIT

UNIT PRICE

AMOUNT

DOCUMENT NUMBER

27894OR

Voice and Data Services

1

\$83,858.87

11/13/14

To provide the Guam Power Authority with voice and data services to include Wide Area Network (WAN) Sites, Mobile Data, Voice PRI (Telephony), SIP Trunking, and Plain Old Telephone Services (POTS) Systems to GPA Facilities including the new Fadian Office, Cahras Compound, T&D Compound and Katsilibe Offices. Commencement shall be upon receipt of purchase order and expires September 30, 2015 or upon exhaustion of funds, whichever occurs first.

Reference: Multi-Step bid No.: GPA-072-14

REMARKS:

A.7 thru A.13 (BUNDLE)

A.7- VOICE - TELEPHONE PRI SERVICE (NEW FACILITIES)

Fadian Facility PRI (3 PRI Lines)

A.8- VOICE - TELEPHONE PRI SERVICE

Hamon Main Office (3 PRI LINES), T&D Compound, and Cahras Compound

A.9- SIP TRUNKING (NEW FACILITY)

Fadian Facility (2 SIP Lines)

A.10- SIP TRUNKING

Hamon (2 SIP Lines)

Page 1 of 5

INSTRUCTIONS TO VENDOR:

SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO GUAM POWER AUTHORITY
PO BOX 2977, DOOR 23, HAGATNA, GUAM 96932

PAYMENT UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION

<< DO NOT FILL THIS
ORDER IF YOUR TOTAL
COST EXCEEDS THIS
TOTAL

TOTAL

ACKNOWLEDGED BY:

SIGNATURE OF VENDOR

DATE: *11/19/14*

SIGNATURE

JOHN M. BENAVENTE, P.E., General Manager

Date

RETURN TO PROCUREMENT DIVISION AT ABOVE ADDRESS

Delegated Authority

MELISSAU *MM*

PURCHASE ORDER

GUAM POWER AUTHORITY
P.O. Box 2977
Hagatna, Guam 96932

THIS PURCHASE ORDER NUMBER

No. 21059 OP

MUST APPEAR ON ALL INVOICES,
PACKING SLIPS, PACKAGES, BIL,
CORRESPONDENCE, ETC.

ORIGINAL

TELEPHONE: (671) 648-3054/5
FAX: (671) 648-3165

PO DATE

11/19/14

PO# ORDER NO./OBJ

31700.02/000.39

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PACIFIC DATA SYSTEMS

186 Illipog Drive
Suite 204A

Tamuning, GU 96913

TEL: (671) 300-0200

FAX: (671) 300-0205

VENDOR

5991

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RECEIVING SECTION:

GUAM POWER AUTHORITY

P.O. BOX 2977

HAGATNA, GUAM 96932

TELEPHONE: (671) 648-3054/5

Facilities Management

AFFORDITY

8109

INVITATION NO.

MS GPA-072-14

CONTRACT NO.

L-072-14

TIME FOR DELIVERY

EXPIRING

SEE
BELOW

DISCOUNT TERMS:

DESCRIPTION / SUPPLIER ITEM

QTY UNIT

UNIT PRICE

AMOUNT

DOCUMENT NUMBER

273940R

A.11- PLAIN OLD TELEPHONE SERVICE (POTS) (NEW FACILITY)
Radian Facility (18)

A.12- PLAIN OLD TELEPHONE SERVICES (POTS)
Herman Main Office (18), TAD Compound (7), GSBKMS
Compound (18), Toujo Biasesi (1), Hagatna (Dialer)
Customer Services (1)

A.13- DID (Direct Inward Dialing) Numbers
700 DID (Direct Inward Dialing) Numbers

COST:

\$53,659.57/Annually

** NOTICE TO PROCEED: November 18, 2014

COMPLETION: December 12, 2014

GPA Point of Contact: Rudy Mesibasan, Computer Technician
Supervisor at 648-3062.

FY 2015: OP NO. 21059

11/18/2014 - 09/30/2015; 10 Months of 1st Year of
3 Year Base Contract.

CONTRACT TERM:

The Contract shall be for three (3) years to commence on or
about November 2014 with two (2) year extension options,
renewable annually upon mutual agreement of both parties.

Page 2 of 8

INSTRUCTIONS TO VENDOR:

SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO GUAM POWER AUTHORITY
PO BOX 2977, CODE 25, HAGATNA, GUAM 96932

PAYMENT UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION

DO NOT FILL THIS
ORDER IF YOUR TOTAL
COST EXCEEDS THIS
TOTAL

TOTAL

ACKNOWLEDGED BY:

SIGNATURE OF VENDOR

DATE: 11/19/14

RETURN TO PROCUREMENT DIVISION AT ABOVE ADDRESS.

SIGNATURE:

JOHN M. BENAVENTE, P.E., General Manager

Delegation Authority

Date

| | | | |
|-------------------|--|---|--------------------------------------|
| MELISSA <i>ML</i> | PURCHASE ORDER GUAM POWER AUTHORITY P.O. Box 2977 Hagatna, Guam 96932 TELEPHONE: (671) 648-3054/5 FAX: (671) 648-3165 | THIS PURCHASE ORDER NUMBER No. <u>21059</u> <u>OP</u> | |
| ORIGINAL | | MUST APPEAR ON ALL INVOICES, PACKING SLIPS, PACKAGES, B/L, CORRESPONDENCE, ETC. | |
| | | PO DATE 11/18/14 | JOB ORDER NO./JOB 91700.921000.89 |

| | | | |
|---------------|---|-----------------------|---|
| VENDOR | PACIFIC DATA SYSTEMS 165 Hilpog Drive Suite 204A Tamuning, GU 96913 TEL: (671) 300-0209 FAX: (671) 300-0208 | VENDOR 5901 | RECEIVING SECTION: GUAM POWER AUTHORITY P.O. BOX 2977 HAGATNA, GUAM 96932 TELEPHONE: (671) 648-3054/5 Facilities Management |
|---------------|---|-----------------------|---|

| | | | | | |
|--------------------------|--|---------------------------------|--------------------------|-----------------------------|------------------------|
| AUTHORITY 3106 | INVITATION NO. MS GPA-072-14 | CONTRACT NO. C-072-14 | TIME FOR DELIVERY | EXPIRES SEE BELOW | DISCOUNT TERMS: |
|--------------------------|--|---------------------------------|--------------------------|-----------------------------|------------------------|

| DESCRIPTION / SUPPLIER ITEM | QTY | UNIT | UNIT PRICE | AMOUNT | DOCUMENT NUMBER |
|---|-----|------|------------|--------|-----------------|
| RESTRICTION AGAINST SEX OFFENDERS: § 604 Section 5253, enacted by P.L. 28-24 and amended by P.L. 28-98: The service provider warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 22 of Title 9 of the Guam Code Annotated, or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted of an offense with the same elements as heretofore defined in any other jurisdiction, or who is listed on the Sex Offender Registry shall provide services on behalf of the service provider while on government of Guam property, with the exception of public highways. If any employee of the service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four (24) hours of the conviction, and will remove immediately such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four (24) hours of notice from the Government, and the service provider shall notify the Government when action has been taken. | | | | | 27364 OR |

Page 3 of 5

| | | |
|---|---|---|
| INSTRUCTIONS TO VENDOR: SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO GUAM POWER AUTHORITY PO BOX 1477, CODE 33, HAGATNA, GUAM 96932 PAYMENT UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION | TOTAL | << DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL |
| ACKNOWLEDGED BY: <i>[Signature]</i> SIGNATURE OF VENDOR RETURN TO PROCUREMENT DIVISION AT ABOVE ADDRESS | DATE: <i>11/19/14</i> SIGNATURE: <i>[Signature]</i> JOHN M. BENAVENTE, P.E., General Manager Delegated Authority | Date: <i>11/19/14</i> |

MELISSAU *ML*

PURCHASE ORDER

GUAM POWER AUTHORITY
P.O. Box 2977
Hagatna, Guam 96932

THIS PURCHASE ORDER NUMBER
No. 21099 OF

MUST APPEAR ON ALL INVOICES,
PACKING SLIPS, PACKAGES, B/L,
CORRESPONDENCE, ETC.

ORIGINAL

TELEPHONE: (671) 648-3654/5
FAX: (671) 648-3165

PO DATE: 11/19/14
JOB ORDER NO./OBJ: 61700.021000.00

VENDOR
PACIFIC DATA SYSTEMS
185 Hilltop Drive
Suite 204A
Tamuning, GB 96913
TEL: (671) 300-0898
FAX: (671) 300-0286

VENDOR
5991

SHIP TO

RECEIVING SECTION:
GUAM POWER AUTHORITY

P.O. BOX 2977
HAGATNA, GUAM 96932
TELEPHONE: (671) 648-3064/5
Facilities Management

| AUTHORITY | INVITATION NO. | CONTRACT NO. | TIME FOR DELIVERY | EXPIRING DATE | PERCENT TERMS |
|-----------|----------------|--------------|-------------------|---------------|---------------|
| 2109 | MS GPA-672-14 | C-072-14 | | BELOW | |

| DESCRIPTION / SUPPLIER ITEM | QTY | UNIT | UNIT PRICE | AMOUNT | DOCUMENT NUMBER |
|-----------------------------|-----|------|------------|--------|-----------------|
|-----------------------------|-----|------|------------|--------|-----------------|

If the service provider fails to take corrective steps within twenty-four (24) hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.

INDEMNIFICATION CLAUSE: Contractor agrees to indemnify and hold harmless Guam Power Authority, its Directors, Officers, and Employees, from and against any liability, claims, judgments, costs and demands of whatever nature arising from any act, omission or negligence of the Contractor, Subcontractor, licensees, agents, or Employees, or arising from any accident, injury or damage whatsoever caused to any person, or to the property of any person, occurring during the term and performance of this contract.

NOTE TO VENDOR:

1. Delivery is no later than the date indicate above.
2. All late deliveries and acceptance are subject to the Liquidated Damages Clause in Section 5-101.09.01 of the Guam Procurement Regulations.
3. All Requests for Delivery Extensions will be closely scrutinized as all items/services are crucial to new customer installation, maintenance, and on-going projects.
4. NOTE: Notwithstanding the fact that this contract was written by one (1) party, it will be construed that it was written by two (2) parties.

Page 4 of 5

INSTRUCTIONS TO VENDOR:
SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO GUAM POWER AUTHORITY
PO BOX 2977, CODE SS, HAGATNA, GUAM 96932

PAYMENT UPON RECEIPT OF MERCHANDISE IN FULL IN GOOD CONDITION

<< DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL

TOTAL

ACKNOWLEDGED BY:

SIGNATURE OF VENDOR

DATE: 11/19/14

RETURN TO PROCUREMENT DIVISION AT ABOVE ADDRESS

SIGNATURE

JOHN M. BERNARTE, P.E., General Manager

Date

Delegated Authority

| | | | |
|-----------------|---|---|-------------------|
| MELISSAD | PURCHASE ORDER GUAM POWER AUTHORITY P.O. Box 2977 Hagatna, Guam 96922 TELEPHONE: (671) 648-3064/8 FAX: (671) 648-3165 | THIS PURCHASE ORDER NUMBER No. <u>21059</u> <u>QP</u> | |
| ORIGINAL | | MUST APPEAR ON ALL INVOICES, PACKING SLIPS, PACKAGES, E.T.C. CORRESPONDENCE, ETC. | |
| | | PO DATE | JOB ORDER NO./OBJ |
| | | 11/18/14 | 91700.821005.09 |

| | | |
|----------------|--|--|
| VENDOR 5981 | PACIFIC DATA SYSTEMS 186 Ulipag Drive Suite 204A Tamuning, GU 96913 TEL: (671) 300-0200 FAX: (671) 300-0285 | RECEIVING SECTION: GUAM POWER AUTHORITY P.O. BOX 2977 HAGATNA, GUAM 96922 TELEPHONE: (671) 648-3064/8 Facilities Management |
| | S E I P T Q | |

| | | | | | |
|----------|----------------|--------------|-------------------|-----------|-----------------|
| ACTIVITY | INVITATION NO. | CONTRACT NO. | TIME FOR DELIVERY | EXPIRES | DISCOUNT TERMS: |
| 3108 | MS 65A-072-14 | C-072-14 | | SEE BELOW | |

| DESCRIPTION / SUPPLIER ITEM | QTY | UNIT | UNIT PRICE | AMOUNT | DOCUMENT NUMBER |
|---|-----|------|------------|--------|-----------------|
| PAYMENT TERMS: NET 30 DAYS after receipt of ORIGINAL invoice, goods and/or services. | | | | | 27384OR |
| REVIEWED BY: <i>[Signature]</i> 11/18/14 JOHN F. L. C. FANGLERON Date Supply Management Administrator | | | | | |

Page 5 of 5

| | | |
|---|---------------------------------------|---|
| INSTRUCTIONS TO VENDOR: SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO GUAM POWER AUTHORITY, PO BOX 2977, CODE 33, HAGATNA, GUAM 96922 PAYMENT UPON RECEIPT OF MERCHANDISE IN GRAB IN GOOD CONDITION | \$\$\$,854.67 TOTAL | << DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL. |
|---|---------------------------------------|---|

| | |
|---|--|
| ACKNOWLEDGED BY: <i>[Signature]</i> SIGNATURE OF VENDOR RETURN TO PROCUREMENT DIVISION AT ABOVE ADDRESS | DATE: 11/19/14 SIGNATURE: <i>[Signature]</i> JOHN M. BENAVENTE, P.E., General Manager Delegated Authority |
|---|--|

Exhibit 5:

Guam Telecom, LLC (GTL)
corporate information



DEPARTMENT OF REVENUE AND TAXATION
 GOVERNMENT OF GUAM
 P.O. Box 25007
 Hantiguan, Guam 96921
 www.goum.gov.gu

BUSINESS LICENSE

SRL NO: 1510814

Ltd Liability Company
 EXPIRES: JUNE 30, 2015

Service R
 ACCOUNT NO. 13-200501644-001

| | |
|------------------|--------------|
| FEE | 50.00 |
| PENALTY | 00 |
| TOTAL FEE | 50.00 |

ISSUED TO: **GUAM TELECOM, LLC**

DOING BUSINESS AS: **MCV TELECOM**

TYPE OF LICENSE: **COMMUNICATION COMMON CARRIER**

BUSINESS LOCATION: **LOT 10062-1-1-RL & 10062-1-6 #497 HARBOR**

MAILING ADDRESS: **LOOP RD DEDEENI GUAM**

PO BOX 24728
 BARRIADA GUAM

PAID

JUN 27 2014

TREASURER OF GUAM
 #13

TELEPHONE: HOME BUSINESS ZIP: 96921
 635-4034

6/27/14

KEEP POSTED IN A CONSPICUOUS PLACE.
 LICENSE MUST BE PRODUCED UPON
 DEMAND TO ANY AUTHORIZED GOVT
 OFFICIAL

John P. Gamacho
 JOHN P. GAMACHO

DIRECTOR OF REVENUE AND TAXATION

LIMITED LIABILITY COMPANY
2014 ANNUAL REPORT
GUAM TELECOM, LLC

DEPT OF REVENUE & TAXATION
GOVERNMENT OF GUAM

SEP 8 1 2014

BUSINESS REGISTRATION

CHARTER NO. FLLC-433

Name of the Limited Liability Company: **Guam Telecom, LLC**

State or country under whose laws it is organized: **Delaware**

The date of organization or, if a foreign limited liability company, the date on which it was authorized to transact business on Guam: **September 16, 2005**

The address of the principal office of the limited liability company:

**497 Harmon Loop Road
Dededo, Guam 96929**

The management of the limited liability company is vested in its members, the name and address of each member:

MCV Guam Investments, LLC

**497 Harmon Loop Road
Dededo, Guam 96929**

A brief statement of the nature of the business which the limited liability company actually conducts on Guam: **Telecommunications Services.**

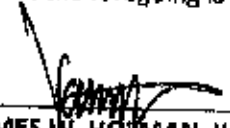
Its Registered Agent for Service of Process and Registered Agent's address:

Michael A. Pangelinan

**259 Martyr Street, Suite 100
Hagatna, GU 96910**

I, **JAMES W. HOFMAN, II**, Chief Legal Officer and Secretary of Guam Telecom, LLC, declare under penalty of perjury under the laws of Guam (6 GCA § 4308) that the foregoing is true and correct.

Date: September 1, 2014,



JAMES W. HOFMAN, II
Chief Legal Officer/Secretary

Announcing a new FCC.gov

The new FCC.gov website is now available. Search, E-File, and more.

FCC Federal Communications Commission

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FCC Form 499 Filer Database Detailed Information

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FCC.gov

**FCC Form 499 Filer Database
DETAILED INFORMATION**

[Form 499 Filer 825686 RSS Feed](#)

Filer Identification Information:

| | |
|--|----------------------|
| 499 Filer ID Number: | 825686 |
| Registration Current as of: | Apr 1 2014 12:00AM |
| Legal Name of Reporting Entity: | Guam Telecom, LLC. |
| Doing Business As: | MCV Telecom |
| Principal Communications Type: | CAP/LEC |
| Universal Service Fund Contributor: | Yes |
| (Contact USAC at 888-641-8722 if this is not correct.) | |
| Holding Company: | Docomo Guam Holdings |
| Registration Number (CORESTC): | 0013921457 |
| Management Company: | |
| Headquarters Address: | P.O. Box 24728 |
| City: | Guam Telecom, LLC |
| State: | G.M.F. |
| ZIP Code: | GU |
| Customer Inquiries Address: | 96921 |
| City: | P.O. Box 24728 |
| State: | G.M.F. |
| ZIP Code: | GU |
| Customer Inquiries Telephone: | 96921 |
| Other Trade Names: | 671-969-4628 Ext: |
| | MCV Telecom |

Agent for Service of Process:
Local/Alternate Agent for Service of Process:

| | |
|--|--|
| Telephone: | |
| Extension: | |
| Fax: | |
| E-mail: | |
| Business Address of Agent for Mail or Hand Service of Documents: | |
| City: | |
| State: | |
| ZIP Code: | |

D.C. Agent for Service of Process: **Lukas, Nace, Gutierrez &**
 Telephone: **703-584-8678**
 Extension:
 Fax:
 E-Mail: sohernoff@foclaw.com
 Business Address of D.C. Agent for
 Mail or Hand Service of Documents: **8300 Greensboro Drive**
Suite 1200
 City: **Washington**
 State: **DC**
 ZIP Code: **22010**

FCC Registration Information:
 Chief Executive Officer: **Jay Shedd**
 Business Address: **P.O. Box 24728**
Guam Telecom, LLC
 City: **G.M.F.**
 State: **GU**
 ZIP Code: **96921**

Chairman or Other Senior Officer: **John Cruikshank**
 Business Address: **P.O. Box 24728**
Guam Telecom, LLC
 City: **G.M.F.**
 State: **GU**
 ZIP Code: **96921**

President or Other Senior Officer: **Katsuhiko Iiada**
 Business Address: **P.O. Box 24728**
Guam Telecom, LLC
 City: **G.M.F.**
 State: **GU**
 ZIP Code: **96921**

Jurisdictions in Which the Filing Entity Provides Telecommunications Services:

Guam

Use browser "Back" button to return to results page.

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This database reflects filings received by USAC as of Nov. 05, 2014

FCC Form 499 Filer Database Software Version 01.03.06 July 21, 2011

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| Federal Communications Commission 445 12th Street SW Washington, DC 20554 More FCC Contact Information... | | Phone: 1-888-CALL-FCC (1-888-225-6822) TTY: 1-888-TELL-FCC (1-888-836-6322) Fax: 1-888-418-0232 | | <ul style="list-style-type: none"> - Privacy Policy - Website Policies & Notices - Required Browser Plug-Ins - Freedom of Information Act | | | |

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Reference Area - Schools and Libraries Division

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SPIN and BEAR Contact Search Results

Guidance on determining if a company is eligible to provide telecommunications services:

Form 499 Filer column indicates "Y":

- This service provider has successfully filed a Form 499 with USAC. Telecommunications providers with a "Y" are eligible to provide Telecommunications Services and Internet service providers with a "Y" are eligible to provide Interconnected Voice over Internet Protocol (VoIP) services.

All other designations:

- Some service providers that do not have a "Y" designation are eligible to provide Telecommunications Services because they meet certain conditions and are exempt from filing a Form 499. You can contact the Client Service Bureau to determine if the company has met those conditions.

Form 499 Filer column indicates "X":

- This service provider has been researched by USAC and is not eligible to provide Telecommunications Services.

Form 499 Filer column indicates "Z":

- This service provider is currently being researched by USAC to determine if it is eligible to provide Telecommunications Services.

Form 499 Filer column is blank:

- This service provider has not been researched and its status is unverified.

Applicants are reminded that they should confirm this and all other information with the service provider.

Page 1 of 1
Results 1 - 1 of 1

| SPIN | Service Provider Name | Doing Business As | Contact Name | Contact Address | Contact Phone | Form 499 Filer | SPAC Filed |
|-----------|-----------------------|-------------------|--------------|--|---------------|----------------|----------------------|
| 143090425 | Guam Telecom, LLC | Guam Telecom, LLC | Boan D Miles | 497 Harmon Loop Road, Decado, GU 96829 | 87 1869-4099 | Y | 2006 2008 2010 |

Questions about the SLD Program? Call our Client Service Bureau at (800) 203-0100

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BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



GT Docket 09-01

APPLICATION OF
GUAM TELECOM, LLC
FOR CERTIFICATE OF AUTHORITY
UNDER 12 G.C.A. §12103

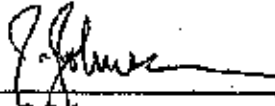
CERTIFICATE OF AUTHORITY

On April 6, 2009, Guam Telecom LLC, a foreign corporation licensed and authorized to do business within the Territory of Guam, filed an application with the Guam Public Utilities Commission [PUC] for issuance of a certificate of authority under 12 GCA 12103 to provide resold local exchange telecommunications services and facilities based local telecommunications services. The application, with supporting documentation, under went review by PUC's Legal Counsel, who reported that Guam Telecom LLC had satisfied the standards set forth in 12 GCA §12103[c] and should, therefore, be issued a certificate, subject to the condition that it files and PUC approves its tariff for these certificated services in accordance with 12 GCA §12106.

After careful review of the application, PUC Legal Counsel's Report, and the record in this docket, which contains Guam Telecom LLC's certificate of public notice of its application in accordance with section three of PUC's Certification Rules and for good cause shown, IT IS HEREBY ORDERED THAT:

1. PUC hereby issues to Guam Telecom LLC a certificate of authority to provide resold and facilities based local exchange services within the Territory of Guam; provided, however that no such service shall be provided until Guam Telecom LLC files and obtains PUC approval of its tariff for said services.
2. This certificate authority is subject to the terms, conditions and requirements of 12 GCA §12103 and to all PUC rules, regulations and orders.
3. All proceedings in this docket are hereby ratified and confirmed.

Dated this 28th day of May, 2009.



Jeffrey C. Johnson
Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PETITION OF GUAM TELECOM LLC
FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER

GT DOCKET 10-02



ORDER APPROVING DESIGNATION

Procedural History

On October 26, 2010, Guam Telecom LLC ("GT") submitted a Petition for Designation as an Eligible Telecommunications Carrier ("ETC") throughout the Territory of Guam.¹ In its petition, GT acknowledged the authority of the Commission to make such a designation and stated that it had never made an ETC application to the Federal Communications Commission ("FCC"). In its Petition, GT contends that it should be granted ETC Designation based upon the criteria and standards set forth in prior Commission Orders and precedent.²

On November 6 and 8, 2010, the PUC placed a notice in the Pacific Daily News inviting written comment from interested parties, on or before November 22, 2010, on GT's Petition for ETC Designation.³ To date no comments have been received. On November 15, 2010, PUC Counsel filed his Report recommending that, subject to certain conditions, that GT's Petition be granted.⁴

Previously GT was issued a Certificate of Authority by the PUC to provide resold and facilities based local exchange services on Guam.⁵

Discussion and Findings of Fact

1. Pursuant to 47 U.S.C. §214(e)(2), the Commission is generally responsible for designating a telecommunications carrier as an ETC within the Territory of Guam in accordance with the requirements of the Federal Act.

¹ GT Petition for Designation as an Eligible Telecommunications Carrier, GT Docket 10-02, filed October 26, 2010.

² See PUC Orders Approving ETC Designation in Docket No. 06-08, Application of Pulse Mobile, LLC (Pulse Mobile); and Docket 08-05, Application of PTT Pacific.

³ See Notice, GT Docket 10-02, published in the Pacific Daily News on November 6, 2010.

⁴ PUC Counsel Report, GT Docket 10-02, filed November 15, 2010.

⁵ See GT Docket No. 09-01; in Docket 10-01, PUC approved GT's General Exchange Tariff No. 1.

2. The Federal Act provides that the Commission may designate a telecommunications carrier as an ETC if the following requirements are satisfied:
 - (a) the carrier offers services that are supported by the federal universal service support mechanism, either using its own facilities or a combination of its own facilities and resale of another carrier's services;
 - (b) the carrier advertises the availability of such services and the charges therefore using media of general distribution; and
 - (c) the designation of such carrier as an ETC is in the public interest (if such carrier is seeking designation for an area served by a rural telephone company that has already been designated as an ETC).⁶
3. GT is authorized to provide resold and facilities based local exchange services, including voice and data, in the entire Territory of Guam.⁷ GT also certifies in its petition that it will offer all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act to any requesting customer within its designated service area; GT offers, or will offer, the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services; and GT advertises, or will advertise, the availability of supported services and the charges therefore using media of general distribution.
4. The FCC has indicated that a commitment in the Petition to provide all of the supported services and to advertise using media of general application upon designation as an ETC is sufficient to satisfy the FCC's requirements. The Commission finds that GT must certify to the Commission no later than August 31, 2011 that GT (a) offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act either using its own facilities or a combination of its own facilities and resale and (b) advertises the availability of supported services and the charges therefore using media of general distribution as described in its Petition. The Commission finds that the August 31 due date is necessary to satisfy the need for sufficient time for the Commission to perform a "due diligence" review.
5. With respect to the supported local usage, GT indicates that it "will satisfy the local usage criterion for ETC designation based upon its offering of unlimited local usage calling plans." Consistent with the FCC's rules, the

⁶ 47 U.S.C. §214(a). The FCC has defined the services that are to be supported by the federal universal service support mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. §54.103(a).

⁷ See GT Docket 09-01 (Issuance of a Certificate of Authority to GT) and GT 10-01 (approving GT's General Exchange Tariff #1).

Commission finds that any designation of GT as an ETC be conditioned on GT's compliance with any local usage requirements prescribed by the FCC.

6. With respect to supported access to emergency service, GT indicates that it will offer emergency service and E911 service. It provides its subscribers with access to all and enhanced all through arrangements with the local incumbent exchange carrier, GTA. To the extent a governmental authority in the Territory of Guam implements E911 systems, GT will be required to provide E911 service. Therefore, the Commission finds that any designation of GT as an ETC be conditioned on GT's compliance with any FCC requirements concerning E911 service when implemented in the Territory of Guam.
7. On March 17, 2005, the FCC adopted additional requirements for ETC designation proceedings in which the FCC acts pursuant to 47 U.S.C. §214(e)(6).⁸ All carriers seeking ETC designation from the FCC must satisfy these requirements. The Commission finds that such additional requirements should be used by the Commission in evaluating GT's petition for ETC designation, in the same manner as the Commission found in Docket 06-08 concerning its evaluation of Pulse Mobile's petition for ETC designation.
8. Pursuant to the additional requirements adopted by the FCC in the *ETC Designation Order*, any applicant for ETC designation must:
 - (1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:
 - (A) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes through the potential customer's premises; and
 - (B) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by
 - (1) Modify or replacing the replacing the requesting customer's equipment;
 - (2) Deploying a roof-mounted antenna or other equipment;
 - (3) Adjusting the nearest cell tower;
 - (4) Adjusting network or customer facilities;

⁸ In the matter of *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (released March 17, 2005) (the "ETC Designation Order").

(5) Reselling services from another carrier's facilities to provide service; or

(6) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

(i) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

- (2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.
 - (3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy requirement. Other commitments will be considered on a case-by-case basis.
 - (4) Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent local exchange carrier in the service areas for which it seeks designation.
 - (5) Certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.
9. The Commission finds that GT has satisfied all of the additional mandatory requirements set forth in the ETC Designation Order. First, GT has certified that it will provide service throughout the Territory of Guam to all customers making a reasonable request for service in accordance with the FCC's requirements. In this regard, GT has committed that it will notify the Commission within thirty (30) days of any determination that it cannot provide service to a requesting customer in accordance with the

FCC's requirements. Second, GT has certified that it will have a reasonable amount of back-up power, the ability to reroute traffic and the capability to manage traffic spikes to remain functional in emergency situations. Third, GT has committed to comply with applicable service quality rules, standards, and consumer protection. Fourth, GT has indicated that it will offer a rate plan to its universal service customers that includes unlimited local usage comparable to the rate plan offered by GTA Telecom, LLC. Fifth, GT has certified that it acknowledges that the PUC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

10. GT has submitted a five-year plan that describes proposed improvements or upgrades to its network, and the estimated amount of investment for each project that is funded by high-cost support. However, because the FCC has recognized that such plans are always subject to change and given FCC precedent for the filing of such plans after ETC designation, the Commission finds that such a detailed build-out plan should be updated by GT following ETC designation as part of its annual filing with the Commission.
11. For the public interest determination, the *ETC Designation Order* provides that the Commission should consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the ETC applicant's service offering. The Commission believes that GT's universal service offering may provide a variety of benefits to customers in Guam, including consumer choice and advantageous service offerings. For instance, universal service support will help GT construct facilities to improve its coverage to all areas in Guam. In addition, GT has made detailed commitments to provide high quality service throughout the Territory of Guam. Designation of GT as an ETC will advance universal service by bringing consumer on Guam new and advanced telecommunications services which will create increased competitive choice. Finally, given the size of the federal universal service fund, the Commission believes it is unlikely that GT's ETC designation would have an adverse impact of the federal universal service fund.
12. GT is obligated under Section 254(e) of the Federal Act to use high cost support "only for the provision, maintenance, and upgrading of facilities and service for which support is intended" and is required under Section 54.314 of the FCC's rules to certify annually that it is in compliance with this requirement. GT has certified to the Commission that, "consistent with Section 54.314(b) of the FCC's rules, all federal high-cost support will be used solely for the provision, maintenance and upgrading of facilities and service for which support is intended pursuant to Section 254(e) of the [Federal] Act." The Commission finds that GT should be required to file an annual certification with the Commission in substantially the form required by Section 54.314(b) and (c) of the FCC's rules to verify that GT will use federal high-cost support only for those facilities and services for which the support is intended, regardless of whether the certification

must actually be filed by GT with the USAC and the FCC under Section 54.314(b).

13. In addition, GT has committed to submit to the Commission on an annual basis the following records and documentation, in addition to any other information or reports that the Commission may reasonably request from time to time:

- GT's progress towards meeting its build-out plans;
- Information on any outage lasting at least 30 minutes and potentially affecting either at least 10 percent of the end users serviced or 911 facilities;
- The number of requests for service from potential customers within GT's service area that were unfulfilled for the past year;
- The number of complaints per 1,000 lines;
- GT's compliance with applicable service quality standards and consumer protection rules;
- GT's ability to function in emergency situations;
- GT's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and
- GT's certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other BIC is providing equal access in the service area.

14. The Commission finds that GT must submit these records and documentation to the Commission by August 31 of each year, beginning in 2011. Consistent with FCC requirements: (1) the progress report should detail GT's progress towards meeting GT's five-year service quality improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center or cell tower for which designation was obtained, and an explanation of why any network improvement targets have not been met; and (2) the information on GT's outages should include the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage and steps taken to prevent a similar outage situation in the future. The Commission finds that GT must provide additional information and reports to the Commission when request therefore is made by the Commission or its staff from time to time.

Order

Based upon the foregoing, the Commission orders that:

- (h) GT must promptly submit to the Commission any additional information or reports that that Commission reasonably request from time to time.
2. The Commission reserves the jurisdiction and authority to (a) institute an inquiry on its own motion to examine GT's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the Territory of Guam, (b) revoke GT's ETC designation if it fails to fulfill any requirements of Section 214 of the Federal Act, the FCC's rules and regulations or the Commission's order after GT begins receiving universal service support and (c) assess penalties for violations of the Commission's rules and orders.

Dated this 29th day of November, 2010.



Jeffrey G. Johnson
Chairman

Guam Telecom, LLC

REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES
APPLYING TO GENERAL EXCHANGE TELECOMMUNICATIONS
SERVICES WITHIN GUAM

467 Harmon Loop Road
Dededo, Guam 96929

Competitive Local Exchange Telecommunications Services Tariff

This tariff contains the description, regulation, and rates for the furnishing of competitive local exchange telecommunications services provided by Guam Telecom, LLC dba MCV Telecom with principal offices located at 467 Harmon Loop Road, Dededo, Guam 96928. This tariff applies for service furnished within Guam. This tariff is filed with the Guam Public Utilities Commission located at Suite 207, GCIC Building, Hagatna, Guam 96932. Copies may be inspected during normal business hours at the Company's principal place of business in Dededo, Guam.

Issued: April 29, 2010

Effective: May 28, 2010

Issued Under the Authority of the Guam Public Utilities Commission

Craig R. Thompson, President & CEO
P. O. Box 24728
Barrigada, Guam 96921

Exhibit 6:

GPA IFB GPA-072-14 MS Volume I: Commercial
Terms and Conditions page 13
regarding Regulatory Authority

The contractor shall also provide its qualifications, and its affiliates' qualifications in the performance of the requirements of this contract.

d. Financial Information

The CONTRACTOR shall provide documentation to illustrate its financial position and capability.

e. Federal and Regulatory Compliance

The CONTRACTOR shall provide supporting documents showing knowledge and experience in complying with federal regulations and other applicable laws on Guam, such as OPA 90 and others, including documents showing compliance with all federal regulations and applicable laws.

f. Client references

At least three (3) client references for similar or larger contracts shall be submitted by the BIDDERS (include the Client Name, Position, Company and copies of contracts with the BIDDERS or AFFILIATES). At least three (3) client reference letters shall be provided, along with a letter describing the relationship with the BIDDER, and the BIDDER's contract performance.

g. Mobilization Capability

The BIDDER shall provide proof of capability to mobilize full support services no later than 15 days after contract signing.

2.10.1.2. Required Forms

Submittal of required forms as specified in Section 3 of this volume, as well as in Volume III Appendices, is mandatory. GPA shall automatically disqualify any proposal submitted without the supplementary information and required forms listed below:

1. A copy of the BIDDER's Articles of Incorporation or other applicable forms concerning business organization (i.e. partnership, sole proprietorship, etc.) and By-Laws;
2. Certificate of Good Standing to conduct business in jurisdiction of residence;
3. Information regarding outstanding claims against the BIDDER;
4. Affidavit of Disclosure of Major Shareholder (Appendix D);
5. Non-collusion Affidavit (Appendix E);
6. No Gratuities or Kickbacks Affidavit (Appendix F);