

1 **PACIFIC DATA SYSTEMS**
185 ILIPOG DRIVE
2 HBC BLDG SUITE 204A
TAMUNING, GUAM 96913
3 TELEPHONE: (671) 300-0200
FACSIMILE: (671) 300-0265

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4 **BEFORE THE**
5 **Office of Public Accountability**

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PACIFIC DATA SYSTEMS, INC.
vs.
GUAM POWER AUTHORITY

OPA-PA-15-007

PDS COMMENTS ON GPA AGENCY REPORT

COMES NOW Pacific Data System (PDS) to make this filing regarding Comments on the Agency Report filed by Guam Power Authority (GPA) in this Appeal on July 7, 2015.

I. GPA ALLOWED DOCOMO PACIFIC TO MAKE A LATE SUBMISSION MODIFYING ITS BID AMOUNT

GPA's Agency report fails to answer the allegations made in the protest and appeal by Pacific Data Systems that GPA allowed the Docomo Pacific Representative to make verbal statements to GPA Procurement Officials that were meant to modify the bid amount contained in the Docomo Pacific bid form for items A-3 and A-4. Docomo Pacific made these statements, after the opening of the PDS and GTA bids, when it was clear that Docomo Pacific would not be the low bidder for items A-3 and A-4.

When GPA evaluated the bids for Items A-3 and A-4, it modified the Docomo Pacific bid price, AS REQUESTED BY THE DOCOMO PACIFIC REPRESENTATIVE at the bid opening. Essentially, GPA allowed Docomo Pacific to modify its Bid price after turn-in of the bids, a violation of 2 GAR 4 §3109(k)(1) which defines this as a late submission and 2 GAR 4 §3109(k)(2) that states such a submission should not be considered for award.

II. GPA's EVALUATION OF THE DOCOMO PACIFIC BID WAS IMPROPER AND VIOLATED GUAM LAW AND PROCUREMENT REGULATIONS

The GPA Agency report substantiates PDS's allegations that GPA modified the bid amount of Docomo Pacific for Items A.3 and A.4. However, the GPA Agency report provides no basis for the authority granted to GPA under Procurement Law or Regulations to make the type of bid amount modifications that GPA made in this procurement. 5 GCA § 5211(f) and 2 GAR 4 §3109(m)(4)(C) do allow for the correction of bid mistakes after opening and before award; however, the parameters where these types of changes can be made are strictly limited and clearly do not apply in this case. The simple fact is that GPA illegally modified the amount of the Docomo Pacific bid for Items A.3 and A.4 and did so in contradiction to Guam Procurement Law and Regulation.

1 **III. CONCLUSION**

2 GPA's Agency Report provides further evidence of errors and violations by GPA in its award
3 recommendation of Bid Items A-3 and A-4 to Docomo Pacific. Without proper authority or justification,
4 GPA modified the Bid Amount of Docomo Pacific reducing the amount bid for items A-3 and A-4 below
5 the amount bid by PDS for these items. These modifications were made without foundation or
6 explanation and were based on verbal representations made by a Docomo Pacific representative at the
7 public bid opening.

8 GPA's evaluation and award selection recommendation represents a serious failure in the procurement
9 process at GPA and a significant threat to the integrity of the process in this procurement. PDS believes
10 that the OPA's recent decision in OPA-PA-004¹ is directly on point to the issues in this PDS appeal.

11 PDS requests that the Public Auditor order GPA to re-evaluate the bid results based on the actual
12 amounts in the bid forms of the bidders without alteration to determine the lowest bidder for Service
13 Items A-3 and A-4.

14 **RESPECTFULLY SUBMITTED** this 17th day of July 2015.

15 **PACIFIC DATA SYSTEMS**

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18 **JOHN DAY**
19 *President*

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¹ at page 7, line 4