

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**MICHAEL A. PANGELINAN, ESQ.**  
**JANALYNN CRUZ DAMIAN, ESQ.**  
**GENEVIEVE P. RAPADAS, ESQ.**  
**CALVO FISHER & JACOB LLP**  
Attorneys at Law  
259 Martyr Street, Suite 100  
Hagatna, Guam 96910  
Telephone No.: (671) 646-9355  
Facsimile No.: (671) 646-9403

Attorneys for Interested Party  
Docomo Pacific, Inc.

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
DATE: 7/27/15  
TIME: 4:59  AM  PM BY: J-L  
FILE NO OPA-PA: 15-007

**OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEAL**

In the Appeal of  
  
PACIFIC DATA SYSTEMS, INC.  
  
Appellant.

DOCKET NO. OPA-PA-15-007  
  
**INTERESTED PARTY DOCOMO  
PACIFIC, INC.'S COMMENTS TO  
GUAM POWER AUTHORITY'S  
AGENCY REPORT**

1 **I. INTRODUCTION**

2 DOCOMO PACIFIC, INC. (“Docomo”), an Interested Party in the above-captioned  
3 appeal, hereby submits the following comments to the Statement Answering Allegations of  
4 Appeal (“Answering Statement”) filed by the Guam Power Authority (“GPA”). Docomo concurs  
5 with and joins in the position of GPA that GPA properly made an award to Docomo and the  
6 Office of Public Accountability (the “OPA”) should dismiss Pacific Data Systems, Inc.’s  
7 (“PDA”) appeal the following reasons:

8 First, Docomo did not seek to modify nor was its price proposal modified for items A-3,  
9 A-4, and A-5 in GPA’s Invitation For Multi-Step Bid, GPA-072-14, Voice and Data Services  
10 (“IFB”) and thus GPA properly determined that was Docomo was the lowest, responsive and  
11 responsible bidders for those services.

12 Second, while PDS’s protest was based on a second issue related to the award by GPA of  
13 regulated local telecommunications services to Docomo, PDS has recognized that this issue has  
14 been decided by the OPA in GPA’s favor. *See In the Appeal of Pacific Data Systems, Inc.*,  
15 Appeal No. OPA-PA-14-013, Decision (Mar. 11, 2015). Because PDS is not seeking review of  
16 that issue, the OPA should not re-examine those arguments as a basis for this appeal.

17 **II. ANALYSIS**

18 PDS’s sole contention in this procurement appeal is that GPA improperly modified  
19 Docomo’s bid amounts during its evaluation of the bid submissions based on oral statements made  
20 by a Docomo representative, Ms. Judy Rosario, at the bid opening, which resulted in an award to  
21 Docomo as the lowest bidder for Bid Items A-3, A-4 and A-5. *See* PDS Notice of Appeal, filed  
22 May 29, 2015; PDS Comments on GPA Agency Report, filed July 17, 2015. In order to support  
23 this argument, PDS argues that it compared the (1) submissions by PDS, GTA, and Docomo  
24 (Proc. Rec. Tab 13); (2) the Bid Abstract (Proc. Rec. Tab 27); and the GPA Bid Analysis dated  
25 November 13, 2014 (Proc. Rec. Tab 35). Based on its review of these documents, PDS concludes  
26 that GPA accepted the oral statements by Ms. Rosario at the bid opening as a modification of  
27 Docomo’s written bid submission. According to PDS, GPA accepted Ms. Rosario’s statements as  
28 changing Docomo’s bid price from a price “PER SITE” to a price for “ALL SITES” for each of

1 the bid items, and proceeded to divide these prices by the number of sites for each of the bid items  
2 to arrive at a lower Docomo bid price. PDS argues that but for the alleged oral modification by  
3 Ms. Rosario, PDS should have been found to be the lowest bidder for Bid Items A-1, A-4 and the  
4 lowest bidder for all WAN services (A-3, A-4, A-5). PDS is wrong.

5 In its IFB, GPA provided price bid forms for each of the bid items, including for Bid Items  
6 A-3, A-4 and A-5, for the bidders to use. While the price bid forms identified "PRICE PER SITE"  
7 for Bid Items A-3, A-4, and A-5, ascertaining and indicating a price per site in the bid forms  
8 would not make sense for certain bid items such as Bid Item A-8. Therefore, in order to prevent  
9 any uncertainty as to its price bid, Docomo's bid on the GPA bid form reflected a total combined  
10 price for all sites for each year and included in its price bid proposal package a separate  
11 spreadsheet ("Docomo Spreadsheet") that explained each bid price on the GPA bid form. *See*  
12 Declaration of James Hofman, filed concurrently herewith.

13 Docomo's Spreadsheet provided GPA with a clear breakdown of Docomo's price for  
14 each Bid Item including a description of the services, quantity (i.e. number of sites per Bid Item),  
15 units, unit price (i.e. price per site) and the total annual price for all units/sites. Notably, following  
16 bid opening, GPA sought further clarification from PDS and GTA as to whether the price bids  
17 inserted on their respective GPA bid forms were in fact unit prices, that is, price per site. (Proc.  
18 Rec. Tab 31 and 32.) No such clarification was sought from Docomo as Docomo's Spreadsheet  
19 clearly set forth Docomo's price per site. With confirmation from PDS and GTA that their stated  
20 bid prices were per site and using the information contained in Docomo's Spreadsheet, GPA was  
21 able to correctly evaluate Docomo, PDS, and GTA's price bid submissions and properly compare  
22 bid prices per site submitted by all three bidders.

23 The oral statements made by Ms. Rosario during the bid opening were not intended to  
24 modify Docomo's bid submission, nor were they treated by GPA as such. Following Ms.  
25 Rosario's statements, Mr. Jesse Reyes, GPA, Buyer Supervisor, informed Ms. Rosario that the  
26 Evaluation Committee, which deals with the technical matters will review it. (*See* Exhibit 8 to  
27 PDS's Notice of Appeal.)  
28

1           There was no modification of Docomo's bid by Ms. Rosario's statements. Docomo's bid  
2 prices for Bid Items A-3, A-4 and A-5 set forth in GPA's Bid Analysis (Proc. Rec. 35) are the  
3 same as Docomo's bid prices set forth on the GPA Bid form as broken down by Docomo's  
4 Spreadsheet. Docomo was merely making clear orally, prior to the opening of its bid, what was  
5 already set forth in its submitted price bid and Spreadsheet included as part of its price bid  
6 submission. Thus, there was no modification as PDS argues and GPA properly evaluated the bids  
7 submitted making sure to compare price per site for all bidders.<sup>1</sup> Accordingly, Docomo's price  
8 bid for Bid Items A-3, A-4 and A-5 conformed in all material respects to the IFB, *see* 5 GCA §  
9 5201(g), and was the lowest responsive and responsible bidder, *see* 5 GCA § 5211(g), 2 G.A.R.,  
10 Div. 4, § 3109(n)(1).

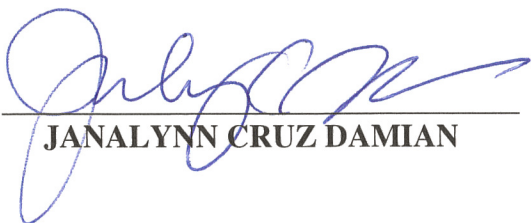
11 **III. CONCLUSION**

12           For all the foregoing reasons and for all the reasons set forth in GPA's Answering  
13 Statement, Docomo is a qualified bidder and GPA's intent to award Bid Items A-3, A-4 and A-5  
14 to Docomo must stand. Accordingly, Docomo concurs with and joins in GPA's request that  
15 Appellant's appeal be dismissed.

16           Respectfully submitted this 27th day of July, 2015.

17  
18  
19  
20  
21  
22  
23  
24

**CALVO FISHER & JACOB LLP**  
Attorneys for Interested Party  
Docomo Pacific, Inc.

By:   
**JANALYNN CRUZ DAMIAN**

25 <sup>1</sup> Indeed, if the OPA accepted PDS's argument, then PDS itself should not have been awarded the bid for Bid Item  
26 A-11. (Proc. Rec. Tab 13 [PDS Bid Price, A11].) In Bid Item A-11, the bid form provided by GPA requests  
27 "PRICE PER LINE" for fifteen different lines for the Fadian Facility. However, PDS submitted a bid price of  
28 \$344.76 (1st year); \$357.52 (2nd year); \$311.15 (3rd year). Clearly, this was not a price per line, but an annual price  
for all 15 lines. If GPA accepted PDS's bid forms, on its face, then it would not have been the lowest bidder for Bid  
Item A-11. PDS's total price, for the first year would have been \$5,171.40 (\$344.76 x 15 lines). To be clear, while  
Docomo has not brought a protest for GPA's award of Bid Item A-11 to PDS, this bid item clearly demonstrates  
PDS's faulty logic to support this protest appeal.

**CERTIFICATE OF SERVICE**


I, Janalynn Cruz Damian, do hereby certify that on July 27, 2015, I caused to have copies of **1) INTERESTED PARTY DOCOMO PACIFIC, INC.'S COMMENTS TO GUAM POWER AUTHORITY'S AGENCY REPORT** and **2) DECLARATION OF JAMES W. HOFMAN, II** filed with the Office of Public Accountability on July 27, 2015, to be served upon the following, by facsimile:

D. Graham Botha, Esq.  
Guam Power Authority  
Route 15, Fadian  
Mangilao, Guam  
Attorneys for Guam Power Authority  
Fax No. 648-3290

Berman O'Connor & Mann  
Ste. 502, Bank of Guam Building  
111 Chalan Santo Papa  
Hagatna, Guam 96910  
Fax No. 477-4366

Dated this 27th day of July, 2015.

**CALVO FISHER & JACOB LLP**  
Attorneys for Interested Party  
Docomo Pacific, Inc.

By:   
**JANALYNN CRUZ DAMIAN**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28