



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor
PROCUREMENT APPEALS

IN THE APPEAL OF,
PACIFIC DATA SYSTEMS, INC.

Appellant

) **APPEAL NO: OPA-PA-11-011**
)
) **DECISION**
)
)

I. INTRODUCTION

This is the Decision of the Public Auditor for an appeal filed on June 30, 2011, by PACIFIC DATA SYSTEMS, INC., (Hereafter "PDS") regarding the GUAM COMMUNITY COLLEGE, Government of Guam's (Hereafter "GCC") June 15, 2011 denial of PDS' April 21, 2011, protest concerning GCC's rejection of all remaining bids submitted in response to Invitation for Bid No. GCC-FB-10-015 (Voice Over-Internet Protocol (Hereafter: "VoIP") (Hereafter, "IFB"). The Public Auditor holds that GCC's April 7, 2011 rejection of the remaining bids violates 5 G.C.A. §5225 because it was not made by the GCC's Chief Procurement Officer as required by the terms of the IFB, and the head of the purchasing agency, GCC's President, did not make the written determination required by 2 G.A.R., Div. 4, Chap. 3, §3115(d)(2)(A)(iv). The Public Auditor further holds that GCC has a cogent and compelling reason to justify rejecting the PDS bid because it exceeds the available funding for the VoIP Telephone System. Accordingly, PDS' appeal is hereby DENIED in part and GRANTED in part.

II. FINDINGS OF FACT

The Public Auditor in reaching this Decision has considered and incorporates herein the procurement record and all documents submitted by the parties pursuant to PDS' July 29, 2011

1 request for a decision based on the record and filings of the parties.¹ Additionally, the Public
2 Auditor has considered and incorporates herein the procurement record filed *In the Appeal of*
3 *Pacific Data Systems, Inc.*, OPA-PA-10-005, and the Purchasing Agency's First Supplemental
4 Procurement Record filed on July 26, 2011 in this matter.² Further, pursuant to 2 G.A.R., Div. 4,
5 Chap. 12, §12108(h), the Public Auditor takes judicial notice of all the pleadings filed in OPA-
6 PA-10-005. Based on the aforementioned record in this matter, the Public Auditor makes the
7 following findings of fact:
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10 1. On or about May 3, 2010, GCC issued the IFB.³

11 2. On June 10, 2010, GCC received bids responding to the IFB from PDS, GTA, and
12 IT&E (Hereafter "ITE").⁴
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15 ¹ See Request for Hearing, Paragraph VIII, Line 2, Page 9, Appellant's Comment
16 on Agency Report filed on July 29, 2011. Further, no other party requested a
17 hearing in this matter.

18 ² See Line 1, Paragraph 1, page 2, Order After Hearing dated July 22, 2011 and
19 filed on July 26, 2011 granting the Purchasing Agency's request to use the
20 Procurement Record in OPA-PA-10-005 as the procurement record in this matter
21 with a supplement. The IFB in OPA-PA-10-005 is the same IFB at issue in this
22 matter.

23 ³ Bid Invitation, Tab 2, Procurement Record filed on October 19, 2010 in OPA-
24 PA-10-005.

25 ⁴ Bid Abstract, Tab 6, Id. NOTE: Said Bid Abstract states that the date was
26 May 26, 2010, however, it was signed by the persons opening the bids and
27 witnessing the opening on June 10, 2010. The Public Auditor finds that the
28 date of the bid opening for the IFB was June 10, 2010 based on said dated
signatures and Amendment Nos. 1 and 5 of the IFB.

1 3. On June 23, 2010, GCC completed its evaluation of the bids and GTA's "Avaya"
2 System Bid and PDS' Bid were tied, however, GTA's "Avaya" System Bid was recommended
3 for award based on its lower price and PDS' bid remained the second highest scoring bid.⁵
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5 4. On July 27, 2010, GCC issued a Notice of Intent to Award the Contract for the IFB to
6 GTA.⁶

7 5. Five (5) days later, on August 3, 2010, PDS filed its Protest concerning GCC's Intent
8 to Award the IFB's Contract to GTA arguing that GTA's bid must be disqualified for four (4)
9 reasons.⁷ These reasons were that GTA's bid bond, Major Shareholder's Disclosure Affidavit,
10 Non-Collusion Affidavit, and Representations regarding Ethics in Public Procurement, did not
11 conform to the IFB's requirements.⁸ PDS supported its allegations by providing GCC with
12 documents GTA filed with the Federal Communications Commission (FCC) indicating that on or
13 about September 24, 2004, Shamrock TeleGuam Holdings, LLC directly owned and controlled
14 87.27% of GTA, and that the remaining 12.73% was owned by Robert Taylor or was being held
15 for the future benefit of Robert Taylor and other members of GTA's management team.⁹
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20 ⁵ VOIP Evaluation Summary dated June 23, 2010, Tab 8, Procurement Record filed
21 on October 19, 2010 in OPA-PA-10-005.

22 ⁶ Notice of Intent to Award dated July 17, 2010, Tab 9, Procurement Record
23 filed on October 19, 2010 in OPA-PA-10-005.

24 ⁷ PDS' Protest dated August 3, 2010, Exhibit 3, Procurement Appeal filed on
25 October 12, 2010 in OPA-PA-10-005.

26 ⁸ Id.

27 ⁹ Page 2, Domestic Section 214 Application filed for transfer of control of
28 the Guam Telephone Authority to TeleGuam Holdings, LLC, WC Docket No. 04-382
(FCC, September 24, 2004), Exhibit E, Id.

1 6. On September 17, 2010, GCC responded to PDS' Protest by stating that GTA's Bid
2 Bond, and Non-Collusion Affidavit substantially conformed to the IFB's requirements, and GCC
3 denied that GTA was required to submit an affidavit to show compliance with Ethics laws and
4 regulations governing Public Procurement.¹⁰ Further, GCC stated that GTA's Major Shareholder
5 Disclosure Affidavit substantially complies with Guam Procurement Law, however, GCC
6 acknowledged that this issue required further inquiry to determine whether GTA was a
7 responsive bidder.¹¹ Finally, GCC acknowledged that its September 17, 2010 letter to PDS was
8 not a denial of PDS' Protest and that GCC would give a formal decision to said protest after
9 GTA responded to GCC's responsibility inquiry.¹²

12 7. On or about September 24, 2010, GCC conducted a responsibility inquiry on GTA
13 pursuant to 2 G.A.R., Div. 4, Chap. 3, §3116(b)(2)(B), and said inquiry consisted of GCC
14 requesting documents from GTA concerning GTA's responsibility as an bidder.¹³

16 8. On or about September 30, 2010, GTA responded to GCC's responsibility inquiry, in
17 relevant part, by providing GCC with a second Major Shareholder's Disclosure Affidavit which
18 indicated that Shamrock Capital Advisors owned 60% and that GE Asset Management Inc.,
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22 ¹⁰ Letter from Sarah A. Strock, Esq., to John Day dated September 17, 2010,
23 Exhibit 4, Id.

24 ¹¹ Id. Page 3.

25 ¹² Page 4, Id.

26 ¹³ Id., and Page 4, GCC's Denial of PDS' August 3, 2010 Protest, Exhibit C,
27 Agency Report filed on October 26, 2010, and Letter from Jennifer Sgambelluri
28 to Carmen K. Santos dated September 30, 2010, Exhibit A, Id.

1 owned 29% of GTA's shares for the past twelve months.¹⁴

2 9. On October 5, 2010, GCC denied PDS' August 3, 2010 protest, stating that GTA's
3 Bid Bond substantially conformed to the IFB's bid bond requirements and that GTA's Bid Bond,
4 and Non-Collusion Affidavit substantially conformed to the IFB's requirements, and GCC
5 denied that GTA was required to submit an affidavit to show compliance with Ethics laws and
6 regulations governing Public Procurement.¹⁵ Concerning GTA's Major Shareholder's
7 Disclosure Affidavit, GCC admitted that GTA's original Major Shareholders Disclosure
8 Affidavit stated that TeleGuam Holdings, LLC owns 100% of TeleGuam Holdings, LLC and
9 that this issue required further inquiry by GCC.¹⁶ However, GCC found that GTA's failure to
10 provide all required information relating to responsibility in the IFB was not fatal and that
11 information requested in IFBs can be supplemented after the submission of the bid to cure
12 shortcomings in bid submissions pursuant to 2 G.A.R., Div. 4, Chap. 3, §3116(b)(3) and that
13 GTA's September 30, 2010 Major Shareholder's Disclosure Affidavit sufficiently ensured
14 GTA's responsibility pursuant to 2 G.A.R., Div. 4, Chap. 3, §3116(b)(3) and (2)(B) and cured
15 GTA's initial failure to submit a valid Major Shareholder's Disclosure Affidavit with its bid.¹⁷
16 Accordingly, GCC denied PDS' August 3, 2010 Protest.¹⁸

21 ¹⁴ Id., and GTA's Major Shareholder's Disclosure Affidavit dated September 30,
22 2010 attached to Letter from Jennifer Sgambelluri to Carmen K. Santos dated
23 September 30, 2010, Exhibit A, Id.

24 ¹⁵ GCC's Denial of PDS' August 3, 2010 Protest, Exhibit C, Agency Report filed
25 on October 26, 2010 in OPA-PA-10-005.

26 ¹⁶ Page 3, Id.

27 ¹⁷ Page 4, Id.

28 ¹⁸ Page 5, Id.

1 10. On October 7, 2010, GCC awarded the IFB to GTA.¹⁹ However, GCC did not issue
2 a Purchase Order to GTA and GTA did not provide any services to GCC under the contract.²⁰

3 11. On October 12, 2010, seven (7) days after GCC denied its August 3, 2010 Protest,
4 PDS filed its appeal in OPA-PA-10-005 and PDS limited its appeal to the issue of whether
5 GTA's bid was responsive due to GTA's failure to submit a valid Major Shareholders Affidavit
6 at the time the bids were received.²¹

7 12. On January 12, 2011, the OPA issued its Decision in OPA-PA-10-005 and found, in
8 relevant part, that: (1) Through simple negligence, GTA submitted a false Major Shareholder
9 Disclosure Affidavit with its bid in violation of 5 G.C.A. §5233 and 2 G.A.R., Div. 4, Chap. 3,
10 §3109(e)(3)(E) which resulted in GTA's bid being non-responsive to the IFB; (2) Guam
11 Procurement Laws and Regulations prohibit GCC from accepting GTA's September 30, 2010
12 Major Shareholder's affidavit because it is a late modification or correction of the bid after bid
13 opening; (3) GCC's award of the contract to GTA is void because GTA was a non-responsive
14 bidder which GCC should have disqualified and rejected at the time of bid opening; and (4)
15 GCC shall consider the IFB's remaining bidders in accordance with Guam Procurement Law and
16 Regulations.²²

17 13. On April 7, 2011, GCC rejected the remaining bids submitted by PDS and ITE in
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23 ¹⁹ Notice of Bid Award dated October 7, 2010, Tab 12, Procurement Record filed
24 on October 19, 2010 in OPA-PA-10-005.

25 ²⁰ Letter from Mary A.Y. Okada to Sarah Strock, Esq., dated January 6, 2011
26 made in response to OPA's Inquiry Re GTA Purchase Order.

27 ²¹ See Notice of Appeal filed on October 12, 2010 in OPA-PA-10-005.

28 ²² See Paragraphs 1, 2, 3, and 6, Section IV. Conclusion, of the January 12,
2011 Decision in OPA-PA-10-005.

1 response to the IFB for three (3) reasons. First, GCC found that the prices of the remaining bids
2 exceeded available funds. Second, GCC found that the supplies and services solicited by the IFB
3 were no longer required by GCC due to the Government Services Agency, Government of
4 Guam's (Hereafter Referred to as "GSA") plan to issue a solicitation for telecommunication
5 services for all of the Government of Guam. Third, GCC found the remaining bids to be at
6 unreasonable prices.²³

8 14. Fourteen (14) days later, on April 21, 2011, PDS submitted their Protest of GCC's
9 rejection of the remaining bids submitted in response to the IFB arguing, in relevant part: (1)
10 PDS' bid submission was within total funding available from a combination of Federal American
11 Recovery and Reinvestment Act (Hereafter Referred to as "ARRA") and GCC funds and, if not,
12 that, pursuant to the IFB specifications, GCC could make quantity adjustments to PDS' bid to
13 bring it to available funding levels.; (2) GSA did not issue a solicitation for telecommunication
14 services for all of the Government of Guam, and if GSA did so in the future, such solicitation
15 would only cover telephone services and not a new telephone system as solicited in the IFB; and
16 (3) PDS' bid price was reasonable.²⁴

19 15. On June 15, 2011, GCC denied PDS' April 21, 2011 protest reiterating GCC's
20 justifications for rejecting the remaining bids submitted in response to the IFB. Further, GCC
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24 ²³ Letter dated April 7, 2011 from Sarah A. Strock, Esq. to Bill Mann, Esq.,
25 Jeffrey Cook, Esq., and Steven Carrara, Esq., Document 1, First Supplemental
26 Procurement Record filed on July 26, 2011.

27 ²⁴ PDS' Protest dated April 21, 2011, Exhibit 3, Procurement Appeal filed on
28 June 30, 2011.

1 delegated its procurement authority concerning this matter to GSA.²⁵

2 16. Fifteen (15) days later, on June 30, 2011, PDS filed its appeal in this matter.
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4 III. ANALYSIS

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6 The main issue presented by this appeal is whether GCC complied with the OPA's
7 January 12, 2011 Decision in OPA-PA-10-005 and its directive that GCC shall consider the
8 remaining bids submitted in response to the IFB in accordance with Guam Procurement Law and
9 Regulations.²⁶ To determine whether GCC's rejection of the remaining bids was in accordance
10 with Guam Procurement Law and Regulations, the Public Auditor must review whether the
11 method GCC used to reject the bids and GCC's justifications for the rejecting of the remaining
12 bids submitted in response to the IFB. Pursuant to 5 G.C.A. 5703, the Public Auditor shall
13 review these issues *de novo*.
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15 A. GCC's Method of Rejecting the Bids was Invalid.

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17 GCC's method of rejecting the bids did not comply with Guam's Procurement Law and
18 Regulations. GCC has the authority to reject all bids after bid opening. Bids submitted in
19 response to an invitation for bids may be rejected in whole or in part as may be specified in the
20 solicitation, when it is in the best interests of the Government of Guam, in accordance with
21 Guam Procurement Regulations and the reasons for the rejection must be made part of the
22 contract file. 5 G.C.A. §5225. Here, the IFB specifically states that the Chief Procurement
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24 ²⁵ Letter dated June 15, 2011 from Catrina M. Campana, Esq., to Bill R. Mann,
25 Esq., Document 3, First Supplemental Procurement Record filed on July 26,
26 2011.

27 ²⁶ Line 19, paragraph 6, Section IV. Conclusion, page 20, Decision dated
28 January 12, 2011 in OPA-PA-10-005.

1 Officer shall have the authority to award, cancel, or reject bids, in whole or in part for any one or
2 more items if she determines it is in the public interest.²⁷ Further, Guam Procurement
3 Regulations specifically require that after opening but prior to award, all bids may be rejected in
4 whole or in part when the Chief Procurement Officer, the Director of Public Works, or the head
5 of a purchasing agency determines in writing that such action is in the Government of Guam's
6 best interests for reasons including but not limited to, in relevant part: (1) Prices exceed
7 available funds; (2) The supplies, services, or construction being procured are no longer
8 required; and (3) All otherwise acceptable bids are at clearly unreasonable prices. 2 G.A.R.,
9 Div. 4, Chap. 3, §3115(d)(2)(A)(iv), (i), and (v), respectively.²⁸ Also, the reasons for rejection
10 shall be made part of the procurement file and shall be available for public inspection. 2
11 G.A.R., Div. 4, Chap. 3, §3115(d)(3). Here, as stated above, GCC's only notice that the bids
12 were rejected came from GCC's Attorney, in her letter dated April 7, 2011, which was addressed
13 to the attorneys for the bidders. The signature of GCC's attorney is the only signature appearing
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19 ²⁷ Paragraph 23, Award, Cancellation & Rejection, IFB, General Terms and
20 Conditions, IFB, Tab 2, Procurement Record filed on October 19, 2010 in OPA-
21 PA-10-005.

22 ²⁸ Generally, GCC is exempt from the centralized procurement regime created by
23 5 G.C.A. §5120, but is governed by Articles 1, 3, 6, 7, 10, 11, and 12 of
24 Guam's Procurement Law. 5 G.C.A. §5125. Further, although GCC is authorized
25 to promulgate its own procurement regulations pursuant to 5 G.C.A. §5131, GCC
26 has adapted the Government of Guam's Procurement Regulations as GCC's
27 Procurement Regulations. See GCC Procurement Policy No. 228 adopted on
28 August 2, 2010 pursuant to GCC Board of Trustee's Resolution No. 9-2010.

1 on said letter.²⁹ Further, said letter states that: “GCC reviewed the remaining bids by PDS and
2 IT&E and has rejected both of them because rejecting these bids is in the best interest of the
3 territory.”³⁰ The Public Auditor finds that GCC’s April 7, 2011 Letter rejecting the remaining
4 bids submitted in response to the IFB does not comply with Paragraph 23 of the IFB’s General
5 Terms and Conditions because it is not signed by the Chief Procurement Officer nor does it
6 indicate it was issued under her authority. The Public Auditor also finds that said letter does not
7 comply with 2 G.A.R., Div. 4, Chap. 3, §3115(d) because it is not a written determination by the
8 head of the purchasing agency, here GCC’s President, which is required by the mandates of the
9 aforementioned Guam Procurement Regulation. Indeed, a review of the procurement record
10 filed in OPA-PA-10-005 and a review of GCC’s First Supplemental Procurement Record filed in
11 this matter on July 26, 2011 indicates that GCC’s President never submitted the written
12 determination required by 2 G.A.R., Div. 4, Chap. 3, §3115(d) at any time prior to GCC’s
13 Attorney’s April 7, 2011 letter or any time after said letter was issued. Therefore, GCC’s
14 method of rejecting the bids, specifically the use of its attorney to effectuate the rejection of the
15 bids after opening and prior to award, is invalid because such method was not made as specified
16 in the IFB and because such method is not in accordance with Guam’s Procurement Regulations.
17 The Public Auditor’s *de novo* review of GCC’s June 15, 2011 denial of PDS’ April 21, 2011
18 protest now moves to the issue of whether GCC’s reasons for rejecting the bids complied with
19 Guam’s Procurement Laws and Regulations.
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26 ²⁹ Letter dated April 7, 2011 from Sarah A. Strock, Esq. to Bill Mann, Esq.,
27 Jeffrey Cook, Esq., and Steven Carrara, Esq., Document 1, First Supplemental
28 Procurement Record filed on July 26, 2011.

³⁰ Page 1, Id.

1 **B. GCC May Justify Rejecting the Remaining Bids if they Exceed Available Funds.**

2 Rejecting the remaining bids submitted in response to the IFB might be in the best
3 interests of the Government of Guam if the remaining bids exceed available funds. Generally,
4 as stated above, after bid opening but prior to award, all bids may be rejected in whole or in part
5 when the Chief Procurement Officer, the Director of Public Works, or the head of a purchasing
6 agency determines that such action is in the best interests of the Government of Guam. 2
7 G.A.R., Div. 4, Chap. 3, §3115(d)(2)(A). Further, it is the policy of the Government of Guam
8 that solicitations shall only be issued when there is a valid procurement need unless the
9 solicitation states that it is for information purposes only and the solicitation shall give the status
10 of the funding for the procurement. 2 G.A.R., Div. 4, Chap. 3, §3115(b). Further, preparing
11 and distributing a solicitation requires the expenditure of government time and funds and
12 businesses likewise incur expense in examining and responding to solicitations, therefore,
13 although the issuance of a solicitation does not compel the award of a contract, a solicitation is to
14 be cancelled or rejected only when there are cogent and compelling reasons to believe that the
15 cancellation of the solicitation is in the best interests of the Government of Guam. 2 G.A.R.,
16 Div. 4, Chap. 3, §3115(a) and (b). Thus, the Public Auditor must review GCC's justifications for
17 rejecting the bids to determine if they are cogent and compelling enough to serve the best
18 interests of the Government of Guam. This analysis starts with GCC's need to procure the
19 products and services it solicited in the IFB.
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24 GCC has a valid procurement need for the VoIP Telephone System it was soliciting for in
25 the IFB. On or about May 3, 2010, when GCC issued the IFB as stated above, GCC was
26 spending over \$100,000 per year on telephone utility costs, not including all expenses for
27 telephone instruments, long distance charges, telephone system reprogramming, cable/wiring,
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1 and other related services costs.³¹ At that time, GCC had over 200 telephone lines with most of
2 the numbers going through a PBX/Centrex phone system and all services were being provided by
3 GTA.³² GCC had determined that by procuring a Voice-over-Internet-Protocol, or VoIP
4 Telephone System, GCC would incur lower costs, have an easier telephone system to manage
5 and develop, and GCC believed that the VoIP telephone system would pay for itself within the
6 first two (2) years of its use with all the savings from avoiding the high cost of standard
7 telephone services.³³ However, the VoIP's Telephone System's potential to pay for itself is a
8 redundant benefit because the project is funded in the amount of Two-Hundred-Eighty-Five-
9 Thousand-Dollars (\$285,000) from federal ARRA funds.³⁴ This means that Guam's taxpayers
10 and GCC's students are spared the costs of the purchase of the VoIP Telephone System the IFB
11 was soliciting for. Therefore, the Public Auditor finds that GCC had a valid procurement need
12 for the VoIP Telephone System the IFB was soliciting. This review now turns to whether GCC
13 had cogent and compelling reasons to reject the remaining bids submitted in response to the IFB.
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17 **1. GCC Funding Is Limited to ARRA Funding.**

18 GCC's first reason, that prices of the remaining bids exceed available funds and that its
19 not appropriate to adjust quantities to come within available funds is a cogent and compelling
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21 ³¹ Preface, IFB, Tab 2, Procurement Record filed on October 19, 2010 in OPA-
22 PA-10-005.

23 ³² Id.

24 ³³ Id.

25 ³⁴ Letter dated April 7, 2011 from Sarah A. Strock, Esq. to Bill Mann, Esq.,
26 Jeffrey Cook, Esq., and Steven Carrara, Esq., Document 1, First Supplemental
27 Procurement Record filed on July 26, 2011, and Statement Answering
28 Allegations of Appeal, Exhibit C, Agency Report filed on July 18, 2011.

1 reason to reject the remaining bids. A bid may be rejected after opening when bid prices exceed
2 available funds and if it's not appropriate to adjust quantities to come within available funds. 2
3 G.A.R., Div. 4, Chap. 3, §3115(d)(2)(A)(iv). The Public Auditor must first decide the
4 preliminary issue of whether PDS' bid exceeds available funding. GCC argues that PDS' bid
5 price of three-hundred-seven-thousand-eight-hundred-eighty-dollars-and fifty-cents
6 (\$307,880.50) exceeds the available two-hundred-eighty-five-thousand-dollars (\$285,000) in
7 ARRA funding by twenty-two-thousand-dollars (\$22,000).³⁵ The Appellant argues that its bid
8 price is less than GCC's total available funds which are four-hundred-seventeen-thousand-dollars
9 (\$417,000) and that the additional one-hundred-thirty-two-thousand-dollars (\$132,000) of GCC
10 funding comes from what GCC is annually paying GTA for GCC's existing telephone system.³⁶
11 The IFB specifically states that GCC seeks to avoid the high cost of its existing telephone
12 services, provided by GTA, with the VoIP Telephone System the IFB solicits. Further, the IFB
13 required the bidders to include the cost to support the VoIP system for the first year (12 months),
14 and to provide the cost for continuing support and maintenance for additional years.³⁷ Finally,
15 although GCC included its monthly GTA billing with it's phone numbers and employee listings,
16 in IFB Amendment 2, GCC explained that the purpose of providing these documents to the
17 bidders was to assist them in making a reasonable price estimate for their bids.³⁸ Therefore, the
18 Public Auditor finds that the available funding for the IFB is limited to the two-hundred-eighty-

23 ³⁵ Statement Answering Allegations of Appeal, page 1, Agency Report filed on
24 July 18, 2011.

25 ³⁶ Line 13, page 3, Procurement Appeal filed on June 30, 2011.

26 ³⁷ Vendor Support/Service Capabilities, VoIP Telephone System Project, IFB,
27 Tab 2, Procurement Record filed on October 19, 2010 in OPA-PA-10-005.

28 ³⁸ GCC response to MCV Question #1, Amendment #3, IFB, Tab 4C, Id.

1 five-thousand-dollars (\$285,000) in ARRA funding and that PDS' bid exceeds the available
2 funds by twenty-two-thousand-eight-hundred-eighty-dollars-and-fifty-cents (\$22,880.50). The
3 Public Auditor will now review whether it would be appropriate for GCC to adjust the quantities
4 of PDS' bid to come within available funds.

6 GCC argues that its not appropriate to adjust quantities in PDS' bid to bring it into
7 available funding because the twenty-two-thousand-dollars (\$22,000) of PDS' bid in excess of
8 the ARRA funding makes the VoIP Telephone System not worth the cost.³⁹ GCC can avoid any
9 costs in excess of the ARRA funds by adjusting PDS' bid. The IFB required the bidders to
10 submit scalable bids incorporating up to 300 or more phone lines and users.⁴⁰ GCC also reserved
11 the right to increase or decrease the quantity of items, in this case phone lines and users, from 0
12 to 300 according to availability of funds.⁴¹ However, the record does not indicate what effect, if
13 any, the deletion of phone lines or users necessary to adjust PDS bid will have on GCC. In the
14 absence of this information, the Public Auditor must respect GCC's decision not to adjust the
15 quantities of PDS' Bid. GCC is required to conduct its procurement activities to provide
16 increased economy and to maximize to the fullest extent practicable the purchasing value of
17 public funds. 5 G.C.A. §5001(b)(5) and 2 G.A.R., Div. 4, Chap. 1, §1102(4). Here, this policy
18 is not served if GCC must adjust quantities to obtain a telephone system that does not have
19 sufficient phone lines to properly service all of GCC's users. The Public Auditor finds the fact
20 that PDS' bid exceeds available funding to be a cogent and compelling reason justifying
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24 ³⁹ Statement Answering Allegations of Appeal, page 1, Agency Report filed on
25 July 18, 2011.

26 ⁴⁰ Project Description, VoIP Telephone System Project, IFB, Tab 2, Procurement
27 Record filed on October 19, 2010 in OPA-PA-10-005.

28 ⁴¹ GCC Response to MCV Question #1, Amendment 3, IFB, Tab 4C, Id.

1 rejection of the bids.

2 **2. GSA's Procurement of Telephone Services Does Not Make the IFB Unnecessary.**

3 GCC's second reason, that the supplies and services are no longer required due to the
4 GSA's solicitation for telephone services, has no merit. GSA and GCC's procurement activities
5 are separate and apart from each other because GCC is exempted from the centralized
6 procurement regime. 5 G.C.A. §5125. Further, to validly take part in GSA's Solicitation of
7 Telephone Services, GCC's Board of Trustee's must give it's approval of GCC's delegation of
8 its procurement authority to GSA. GCC Board of Trustees Policy 228 (Procurement Policy)
9 dated August 2, 2010. Here, there is no evidence in the Procurement Record that GCC's Board
10 of Trustee's has delegated the authority of GCC's Chief Procurement Officer to solicit for
11 telephone services to GSA. Therefore, the Public Auditor finds that GSA's solicitation for
12 telephone services does not constitute a cogent or compelling reason for GCC to reject PDS' bid.
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16 **3. PDS' Bid Is Not Unreasonable.**

17 GCC's third reason, that PDS' bid cost was unreasonable, has no merit. The head of a
18 purchasing agency may reject otherwise acceptable bids after opening but prior to award if such
19 bids contain clearly unreasonable prices. 2 G.A.R., Div. 4, Chap. 3, §3115(2)(d)(2)(A)(v).
20 GCC found that PDS' bid was unreasonable solely because it exceeds the available ARRA
21 funding by twenty-two-thousand-dollars (\$22,000).⁴² However, there is no evidence in the
22 record in this matter that PDS' prices were inflated or suspiciously high. Therefore the Public
23 Auditor finds that the fact that PDS' bid exceeds the available ARRA funds for the project, by
24 itself, does not make PDS' bid unreasonable.
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27 ⁴² Page 1 and 5, Rebuttal to Appellant's Comments on the Agency Report filed
28 on August 5, 2011.

1 Guam Procurement Law or Regulations, and GCC must do so no later than 5:00 p.m. on or
2 before September 30, 2011.

3 6. PDS is hereby awarded, pursuant to 5 G.C.A. §5425(h) (2), PDS' reasonable costs
4 incurred in connection with PDS' April 21, 2011 Protest, excluding PDS' attorney's fees,
5 because, as PDS was the second highest scoring bidder, PDS had a reasonable likelihood of
6 being awarded the contract but for GCC's reckless violation of 5 G.C.A. §5225. GCC may
7 object to PDS' cost demand by filing the appropriate motion with the Public Auditor no later
8 than fifteen (15) days after PDS submits such cost demand to GCC.

9 This is a Final Administrative Decision. The Parties are hereby informed of their right to
10 appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with
11 Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final Administrative
12 Decision. 5 G.C.A. §5481(a).

13 A copy of this Decision shall be provided to the parties and their respective attorneys, in
14 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website
15 www.guamopa.org.

16
17 **DATED** this 26th day of September, 2011.

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19 

20 DORIS FLORES BROOKS, CPA, CGFM
21 PUBLIC AUDITOR
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FAX

To: **Ms. Catrina Campana, Esq.**
Legal Counsel for GCC (Purchasing Agency)

Mr. Bill R. Mann, Esq.
Legal Counsel for PDS (Appellant)

From: **Doris Flores Brooks, CPA, CGFM**
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OPA Procurement Appeals
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238 Archbishop Flores St.
Hagatna, Guam 96910

Agency:	All Media	Pages	18 (Including cover)
CC:		Date:	September 26, 2011
Fax:	CM: 646-0777 BOM: 477-4366	Point of Contact Nos.	Tel: 475-0390 x 211 (Anne Camacho) Fax: 472-7951

Re: **Appeal No. OPA-PA-11-011: DECISION**

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Anne Camacho – acamacho@guamopa.org

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