



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910

Phone: (671) 475-0390 / FAX: (671) 472-7951

June 19, 2019

Mrs. Mary A. Y. Okada
President
Guam Community College
P.O. Box 23069
Barrigada, Guam 96921

VIA FACSIMILE: (671)734-5238

Re: Notice of Receipt of Appeal – OPA-PA-19-007

Dear Mrs. Okada,

Please be advised that Pacific Data Systems, Inc. (hereinafter referred to as “PDS”) filed an appeal with the Office of Public Accountability (OPA) on June 18, 2019, regarding the Guam Community College’s (GCC) denial of PDS’s protest related to the procurement for the supply of Cisco Certified Network Associate (CCNA) Security Equipment (IFB# GCC-FB-19-005). OPA has assigned this appeal case number OPA-PA-19-007.

Immediate action is required of GCC pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at www.opaguam.org. The first five pages of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeal. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

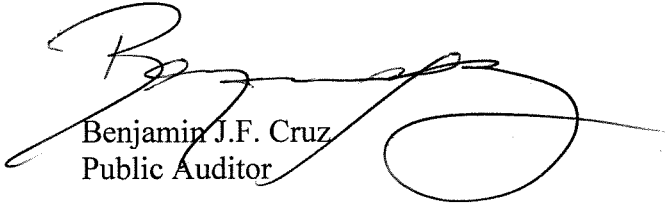
Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Wednesday, June 26, 2019**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Division 4, Chapter 12, §12105, by **Wednesday, July 3, 2019**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to PDS. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that you provide one

original and two copies of the said record, which will be distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Thyrza Bagana at 475-0390 ext. 204 or tbagana@guamopa.com should you have any questions regarding this notice.

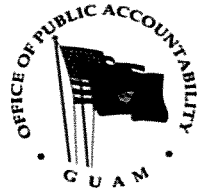
Sincerely,



Benjamin J.F. Cruz
Public Auditor

Enclosure: First Five Pages of the Notice of Appeal – OPA-PA-19-007

Cc: Pacific Data Systems (“PDS”)



RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 6-18-19

TIME: 4:30 AM PM BY: JM

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL FILE NO OPA-PA: 19-007

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-19-007

.....
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**
.....

PART III- Appeal Information

A) Purchasing Agency: **Guam Community College**

B) Identification/Number of Procurement, Solicitation, or Contract: **GCC-FB-19-005**

C) Decision being appealed was made on June 3, 2019 (date) by: GCC President and Chief Procurement Officer

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:

- **G4S Security Systems, Inc. (G4S)**
 - **ComPacific**
-

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

PART IV- FORM AND FILING

This is a Procurement Appeal by Pacific Data Systems, Inc. ("PDS") of the protest decision rendered by Guam Community College (GCC) on June 3, 2019 (attached as Exhibit A) regarding a Protest made by PDS reference procurement GCC-FB-19-005, a procurement for the supply of Cisco Certified Network Associate (CCNA) Security Equipment.

The original Protest in this matter was made by PDS to GCC on May 28, 2019 (attached as Exhibit B). To the best of PDS' knowledge no formal award has been issued by GCC in this procurement.

IV.1 PDS GROUNDS FOR APPEAL:

A. THE GCC REJECTION OF THE PDS PROTEST IS IN ERROR. GCC'S ACTIONS ARE IN VIOLATION OF THE GUAM PROCUREMENT ACT OR GUAM PROCUREMENT REGULATIONS AS NOTED.

1. Reference the GCC Bid Requirements at pages 2 and 8, the G4S bid did not contain a valid Bid Bond. This is due to the fact that the Bid Bond Form (see Exhibit C) requires the form to be "*signed and sealed*" by an Authorized Representative of the Bidder. The G4S Bid Bond Form is not sealed. Unfortunately, the GCC procurement personnel opening the bid did not notice this and erroneously accepted the bid bond at the time of opening. Normally the Bid Bond would be reviewed and rejected at opening if found not to comply with the Bid requirements or procurement laws/rules noted previously. Reference 5 GCA §5212(e).
2. Reference the GCC Bid requirements at page 7, #16, G4S did not submit a valid Affidavit re: Contingent Fees (see Exhibit D). The Affidavit submitted by G4S was not properly dated by the Notary (no year is noted for the date of the document). Again, GCC procurement personnel opening the bid did not notice this and erroneously accepted this Affidavit at the time of opening. Normally the Affidavits would be reviewed and rejected at opening if found not to comply with the Bid requirements or procurement laws/rules noted previously.
3. Reference the GCC Bid requirements at page 3, #2e (see Exhibit E), G4S did not comply with this requirement by providing confirmation of its ability to provide delivery within the 30-day timeline required. This is a requirement of the bid and should be grounds for the G4S bid to be rejected as non-responsive.
4. Reference the GCC Bid Requirements noted in point #3 of Amendment 1 (see Exhibit F), that Bidders should provide their Cisco Partner Authorization information with their bid; PDS has no evidence that G4S provided the required information with their

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

bid. G4S is not listed on the Cisco Partner information web site as a valid Cisco Partner for Guam.

<https://locatr.cloudapps.cisco.com/WWChannels/LOCATR/openBasicSearch.do>.

See Exhibit G that shows the information available at this website as of this date. Note that the other two bidders, PDS and ComPacific, are shown on this website but there is no entry for G4S. This is an important requirement of the bid and G4S' failure to provide this information with their bid should be grounds for the G4S bid to be rejected as non-responsive.

5. Reference the GCC Bid Requirements noted in point # 4 of Amendment 1 (see Exhibit F), that Bidders should provide their Cisco Distributor information with their bid; PDS is unaware if G4S provided the required information with their bid. The Cisco Distributor information is important to ensure that the products being provided have been legitimately sourced through an approved Cisco Distributor and are genuine Cisco hardware and software. This ensures warranty coverage and future support of the systems by Cisco. Unfortunately, many suppliers are not supplying authentic Cisco products and Software (used equipment or counterfeit products are used). This is an important requirement of the bid and G4S' failure to provide this information with their bid should be another finding for the G4S bid to be rejected as non-responsive.

B. THE GCC REJECTION OF THE PDS PROTEST AND ACCEPTANCE OF THE G4S BID IS IN VIOLATION OF THE GUAM PROCUREMENT ACT CHAPTER 5 § 5211 SINCE GCC HAS FAILED TO APPLY THE BID REQUIREMENTS AND SPECIFICATIONS IN THE REVIEW OF THE G4S BID AS REQUIRED BY 5 GCA Ch.5 § 5211(e).

1. Reference the above section of the Guam Procurement Act, GCC may only review and evaluate a bid based upon the terms and conditions for evaluation as defined in the bid document. GCC cannot define these bid terms and conditions and then later ignore the use of this language in the review of Bidder submissions. PDS believes that GCC has in fact done this, by ignoring G4S clear violation of Bid Terms and Conditions or classifying these issues a "minor informalities" and allow G4S to correct the deficiencies after turn-in of their bid.

C. THE GCC PROTEST DECISION IS IN ERROR DUE TO THE INAPPROPRIATE ALLOWANCE OF THE USE OF MINOR INFORMALITY RULES OF THE GUAM PROCUREMENT REGULATIONS (REFERENCE 2 GAR DIV. 4 § 3109(m)(4)(B)) TO ALLOW MODIFICATION OF A BID AFTER SUBMISSION.

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

1. The Guam Procurement Act and Guam Procurement Regulations do allow for the limited correction of bid submissions after turn-in in limited cases (reference 2 GAR, Div. 4§3109(m)(4)(B)). The limited situations where these corrections or clarifications are allowed are defined in the text of the regulations. GCC's Protest Decision in effect ignores the limitations of the use of these regulations and attempts to use these rules to allow G4S to make significant and inappropriate change and corrections to the G4S bid submission. By allowing these changes, after bid turn-in, GCC's actions set a dangerous precedent could seriously undermine the future integrity of the procurement process if allowed to stand.

IV.2 RULING REQUESTED BY THE OPA IN THIS APPEAL:

- A. PDS seeks a *de novo* review of the procurement documents and any determinations made by GCC in this procurement. Specifically, PDS requests that the OPA validate the decisions made by GCC to ignore the deficiencies of G4S bid and allow the G4S bid to be accepted for evaluation of award. It is PDS' position that the deficiencies contained in the G4S should have caused the bid to be rejected by GCC. Instead GCC has either refused to acknowledge these deficiencies or has "forgiven" these issues by classifying these as "minor informalities". PDS believes these actions by GCC create a serious threat to the integrity of the procurement process and require review by the OPA.
- B. PDS requests a ruling by the OPA on each of the appeal points documented by PDS in this procurement appeal.
- C. PDS requests reimbursement of any and all applicable costs as may be determined by the OPA in this matter.
- D. PDS requests that GCC be ordered to STAY all activity related to this procurement during the pendency of this appeal.

IV.3 SUMMARY OF SUPPORTING EXHIBITS ATTACHED HERETO:

Exhibit A – GCC Denial of PDS Protest dated June 3, 2019

Exhibit B – PDS Protest Letter dated May 28, 2019

Exhibit C – G4S bid did not contain a valid Bid Bond

Exhibit D – G4S did not submit a valid Affidavit re: Contingent Fees

Exhibit E – GCC Bid requirements at page 3, #2e; G4S did not comply with this requirement

Exhibit F – GCC Bid Requirements noted in point # 4 of Amendment 1


Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

Exhibit G – G4S is not listed on the Cisco Partner information web site

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 18th day of June, 2019.

By: 

APPELLANT – Pacific Data Systems
by John Day, its President

Suite 401 DNA Building
238 Archbishop Flores St.
Hagåtña, Guam 96910



FAX

To:	Mrs. Mary A. Y. Okada President Guam Community College P. O. Box 23069 Barrigada, Guam 96921 Phone: (671) 735-5542/5540 Fax: (671) 734-5238	From:	Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
		Pages:	8 (including cover page)
CC:	Joh Day President Pacific Data Systems, Inc. 185 Ilipog Drive, Suite 204A Tamuning, Guam 96913 Phone: (671) 300-0202 Fax: (671) 300-0265	Date:	June 19, 2019
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-19-007 Notice of Receipt of Appeal

For Review

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Thank you,

Maria Thyrza Bagana, Auditor

tbagana@guamopa.com

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FAX

To:	Mrs. Mary A. Y. Oknda President Guam Community College P. O. Box 23069 Barrigada, Guam 96921 Phone: (671) 735-5542/5540 Fax: (671) 734-5238	From:	Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
		Pages:	8 (including cover page)
CC:	Joh Day President Pacific Data Systems, Inc. 185 Hlipog Drive, Suite 204A Tamuning, Guam 96913 Phone: (671) 300-0202 Fax: (671) 300-0265	Date:	June 19, 2019
		Phone:	(671) 475-0390 x. 204
		Fax:	(671) 472-7951

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Comments:

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Thank you,
 Maria Thyrsa Bagana, Auditor
tbagana@guamopa.com

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002	066	3000265	10:55:30 a.m. 06-19-2019	00:04:31	1/8	1	EC	HS	FA14400

Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	CP: Completed	TS: Terminated by system
HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TU: Terminated by user	EC: Error Correct



Thyrza Bagana <tbagana@guamopa.com>

FW: Notice of Receipt of Appeal

2 messages

John Day <john@pdsguam.com>

Wed, Jun 19, 2019 at 1:20 PM

To: tbagana@guamopa.com

Cc: Josephine Chong <josephine@pdsguam.com>, Franklin Artero <franklin@pdsguam.com>

Hello Thyrza,

This email will confirm our receipt of this OPA notice. I can also confirm that PDS has delivered a copy of the PDS Appeal to GCC as required by OPA rules.

Sincerely,

John Day

President/COO

Pacific Data Systems

From: Thyrza Bagana [mailto:tbagana@guamopa.com]

Sent: Wednesday, June 19, 2019 1:28 PM

To: john@pdsguam.com

Subject: Notice of Receipt of Appeal

Good afternoon Mr. Day,

Please see attached Notice of Receipt of Appeal

Please acknowledged receipt. Thank you.

Sincerely,

Maria Thyrza Bagana

Auditor



Thyrza Bagana <tbagana@guamopa.com>

Ack Receipt

4 messages

Esther Muna <esther.muna@guamcc.edu>
Reply-To: esther.muna@guamcc.edu
To: tbagana@guamopa.com
Cc: materialsmanagement@guamcc.edu

Wed, Jun 19, 2019 at 5:00 PM

Hi Ma Thyrza,

GCC is confirming receipt of fax dtd June 19, 2019 ref: OPA-PA-19-007.

Thank you,

Esther

Esther Muna

Private Secretary to the President

Guam Community College

P.O. Box 23069

GMF, Guam 96921

Tel: (671) 735-5700

www.guamcc.edu



E-mail administered by Guam Community College

Thyrza Bagana <tbagana@guamopa.com>
To: esther.muna@guamcc.edu

Wed, Jun 19, 2019 at 5:04 PM

Hi Ms. Muna,

Thank you for the acknowledgment.