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7 OFFICE OF PUBLIC ACCOUNTABILITY

8 Docket No. OPA-PA 14-003

9 In the Appeal of
10 PACIFIC DATA SYSTEMS, INC.,
11 Appellant.

OPPOSITION OF PACIFIC DATA
SYSTEMS, INC. TO MOTION TO
DISMISS

12 The Appellant Pacific Data Systems, Inc. ("PDS") opposes the Motion of Guam
13 Visitors Bureau ("GVB") to dismiss the PDS appeal.

14 GVB argues that the PDS protest filed on March 24, 2014 was untimely since it
15 was made more than fourteen days after PDS knew or should have known of the
16 grounds for its protest. The error in GVB's argument is based on its position that
17 "... The facts alleged to support PDS' protest are based on disparity of prices of items
18 offered to the GVB ..." See GVB Motion at pp. 4 and 5. This is incorrect. Obviously, the
19 fact that one bidder's prices are lower than another bidder's prices is not grounds for a
20 protest. To the contrary, the basis of the PDS protest is that stated in the protest of
21 March 24, 2014, namely the failure of GVB to comply with 2 GAR § 3109(m)(3). That
22 section provides:

23 (3) **Confirmation of Bid.** When the Procurement
24 Officer knows or has reason to conclude that a mistake has
25 been made, such officer should request the bidder to confirm
26 the bid. Situations in which confirmation should be
27 requested include obvious, apparent errors on the face of the
28 bid or a bid unreasonably lower than the other bids
submitted. If the bidder alleges mistake, the bid may be
corrected or withdrawn if the conditions set forth in

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Subsections 3109(m)(4) through 3109(m)(6) of this Section are met. (emphasis added).

It was and is PDS' position that the enormous disparity in prices triggered application of this requirement. The PDS protest of March 24, 2014 is attached as Exhibit 1 to the Declaration of John Day. As stated in that protest, the CCTV camera proposed by G4S was only \$837.50 as compared to the camera proposed by PDS at \$3,900.00. The cost quoted by G4S to install new CCTV cameras at existing locations was only \$156.00 per site versus the PDS bid of \$2,500.00 per site. The cost quoted by G4S to connect and install CCTV cameras at new locations was only \$156.00 per site versus the \$21,000.00 per site bid by PDS. A disparity in price such as \$156.00 versus \$21,000.00 clearly raises the fundamental issue of whether the bidders have the same understanding of what they are bidding. In this case, there were only two bidders, and one of the two bids is either a mistake or nonresponsive to the specifications.

As stated in the GVB Motion, PDS did raise this concern with GVB in a meeting on March 5, 2014. However, PDS was not at that time in a position to responsibly file a protest, since there was still the question of whether GVB would comply with the requirements of 2 GAR § 3109(m)(3) by requesting that G4S confirm its bid. PDS had filed a Freedom of Information Act Request with GVB on March 4, 2014. See Exhibit 2 to the Day Declaration. That Request at paragraph 2 did request "All communications (emails, letters, faxes, documents, billings, etc.), between GVB and G4S, between December 30, 2013 and March 4, 2014." GVB did respond to that request on March 10, 2014. See Exhibit 3 to the Day Declaration. GVB did provide copies of communications between it and G4S as requested. However, those communications did not include any request from GVB to G4S for confirmation of its bid. See Day Declaration. Then and

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only then, was PDS in a position to file a protest based upon GVB's violation of 2 GAR § 3109(m)(3). PDS timely filed its protest within fourteen days on March 24, 2014.

Subsequent events have demonstrated the validity of the PDS protest. The G4S Technical Bid was part of the Agency Report filed by GVB in this appeal. A cursory review of the G4S Technical Bid reveals the basis for the huge price discrepancy in the bids, namely that G4S failed in a wholesale manner to meet the requirements of the specifications. Detail in this regard is provided in the PDS Comments on Agency Report, filed May 12, 2014 in this appeal. For example, the difference in price in the CCTV Cameras (\$837.50 versus \$3,900.00) is explained by the fact that the G4S bid used the old analog technology that do not provide for audio recording in direct violation of the specifications. The difference in the monitoring expense is explained by the fact that G4S bid has the monitoring done at its "National Control Center" as opposed to the Frankie Smith GPD Precinct in Tumon as required by the IFB. The discrepancy in the installation cost of the CCTV cameras at new locations (\$156.00 per site versus \$21,000.00 per site) is explained by the fact that the G4S bid was only for the design of the system and not for the actual installation of the cameras as required by the IFB.

In summary, the G4S bid was unreasonably lower than the PDS bid, which triggered GVB's obligation to require G4S to confirm its bid. PDS submits the OPA should rule that GVB violated 2 GAR § 3109(m)(3). Since GVB has declined to act, and given the suspicious disparity in the bid prices, it is further submitted that the OPA should exercise the authority granted it by 5 GCA § 5703 and conduct a *de novo* review of both the G4S and PDS bids in comparison to the specifications. This review will "... promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5." See 5 GCA § 5703.

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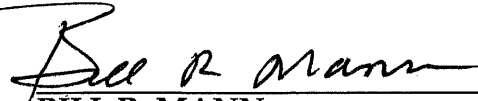
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DATED this 19th day of May, 2014.

Respectfully submitted,

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PACIFIC DATA SYSTEMS, INC.

By:



BILL R. MANN