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PROCUREMENT APPEALS

DATE: 7/29/15

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

TIME: 4:10 AM PM BY: Yuko

FILE NO OPA-PA: 15-007

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 15-007
)
)
_____)

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 Power Authority (GPA)
- B) Identification/Number of Procurement, Solicitation, or Contract: IFB Bid GPA-072-14 MS
- C) Decision being appealed was made on May 14, 2015 (date) by:
 GPA Chief Procurement Officer Director of Public Works Head of Purchasing Agency

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:
- **Teleguam Holdings, LLC (GTA)**
 - **Docomo Pacific, Inc. (Docomo)**

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

PART IV- FORM AND FILING

This is a Procurement Appeal made under §12201 by Pacific Data Systems (PDS) of a Protest Decision by Guam Power Authority (GPA) regarding the award in the above referenced procurement. The original protest made by PDS in this Appeal was made on November 24, 2014 (see Exhibit 1). The PDS Protest was denied by GPA in a Decision letter faxed to PDS on May 14, 2015 (see Exhibit 2).

Background

On September 18, 2014, GPA issued a Multi-Step Invitation for Bid, GPA-072-14 MS, for Voice and Data Services. On October 24, 2014, three bidders; PDS, Teleguam Holdings LLC (GTA), and Docomo Pacific Limited, Inc (Docomo) responded to the GPA bid. On November 4, 2014, GPA completed its Phase I evaluation and qualified all three bidders to proceed to Phase II. On November 6, 2014, GPA held a public opening of the Cost Proposal for each of the bidders. On November 13, 2014, GPA issued a Notice of Intent of Possible Award and Bid Status (see Exhibit 3) that showed a split award of the various services to PDS and Docomo. On November 24, 2014, PDS filed the protest that is the subject of this appeal.

It should be noted that PDS did make another Protest in this procurement, specifically a protest was made on November 17, 2014. The November 17, 2014 Protest included one issue that was similar in nature to one of the issues included in the protest made by PDS on November 24, 2014. This issue was related to the regulatory authority of Docomo Pacific to provide the services bid in this procurement. The PDS 11/17/2014 protest was appealed to the OPA on 12/09/2014 and was adjudicated by the OPA under OPA-PA-14-013 with a decision issued on March 11, 2015.

It is PDS' position that no awards had been finalized or effectuated by GPA prior to the timely protest by PDS on November 24, 2014, and that a Stay now exists in this procurement.

PDS Protest and GPA Decision

The PDS Protest of November 24, 2014 (attached as Exhibit 1), was based on two issues; the first issue dealt with the evaluation and award by GPA to Docomo Pacific for WAN Services, Items A-3, A-4, and A-5 of the bid. It is PDS' position that PDS was in fact the lowest bidder for these bid items not Docomo for whom GPA recommended the award to. The second issue dealt with the award by GPA of regulated local telecommunications services to Docomo. As noted previously, this issue was the subject of a previous PDS Protest and OPA Appeal for which a final determination has been made by the OPA.

This Appeal by PDS is only related to the first issue of the PDS 11/24/2014 Protest; the issue related to GPA's evaluation and Intent to Award Docomo as the low bidder for the WAN Services; Bid Items

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

A-3, A-4, A-5. PDS is not pursuing an Appeal of the second protest issue since the OPA has already made a final determination in this matter in her decision issued under OPA-PA-14-013 on March 11, 2015.

PDS Procurement Appeal

PDS is appealing the decision made by GPA in the PDS Protest related to the evaluation and award decision by GPA that determined that Docomo was the low bidder for Bid Items A-3, A-4 and the combined WAN service total including A-5. A review of the official GPA Bid Abstracts from the public opening of the bid (see Exhibit 4) clearly shows that PDS was the low bidder for Bid Items A-3, A-4 and the lowest bidder for all WAN services (A-3, A-4, A-5). PDS verified the Bid Abstract with copies of the each of the Bidder's Cost Proposal submissions (see Exhibit 5) and found that the GPA Bid Abstract accurately reflects the bids offered by each of the three bidders; PDS, GTA, and Docomo. However, PDS found that GPA modified the bid amounts for the Docomo bid resulting in an evaluation favoring an award to Docomo as the low bidder for the contested bid items.

In the PDS Protest of 11/24/2014, PDS provided a comparison of the bid amounts from each Bidder for each of the Bid Items for which PDS is protesting the GPA evaluation and award; A-3, A-4, and A-5. This comparison clearly showed that the PDS bid represented the lowest individual bid for A-3 and A-4 and the lowest combined bid for the WAN Bid Items; A-3, A-4, A-5.

PDS has compared the GPA Evaluation Worksheet (Exhibit 6) with Bid Abstracts (Exhibit 4) and Bidder Cost Submissions (Exhibit 5) and determined that GPA modified the amount bid by Docomo for the Bid Items at issue in this Procurement Appeal; Bid Items A-3 and A-4. The modifications made by GPA had the effect of lowering the Docomo bid to make Docomo the lowest bidder for A-3 and A-4 and the lowest combined bidder for the WAN service (A-3, A-4, A-5). It is PDS' position that this significant and prejudicial change by GPA, after the public bid opening and during the evaluation process was illegal and violated Guam Procurement Law and Regulations.

GPA seems to have justified the changes it made to Docomo's bid prices based on public statements made by one of the Docomo observers, Judy Rosario, who attended the public bid opening. See the statement of John Mantanona attached as Exhibit 7 that summarized what he witnessed at the public bid opening. Aside from the statement of John Mantanona, PDS also has included a verbatim audio recording of the public opening of the bid; included with this Appeal as Exhibit 8.

Based on the PDS analysis of the GPA Evaluation worksheets and the Bidder Price Proposals, it is clear that GPA allowed verbal representations by Judy Rosario, a Docomo observer, to be accepted by GPA at the bid opening as modifying the prices offered by Docomo. Essentially GPA took the Docomo Bid Price Proposal that stated that the prices shown were "PER SITE" and changed the prices to be reflective of a price for "ALL SITES" for each of the Bid Items under Appeal (A-3, A-4). GPA then took the prices bid by Docomo and divided these prices by the number of sites for each of the bid items to arrive at a modified Docomo price for the item services.

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

By allowing Docomo to verbally make changes to its written bid, that had already been recorded and read aloud by GPA at the Public Bid Opening, GPA essentially accepted a late bid submission and verbal modification by Docomo of its Price Proposal. GPA made these price changes behind closed doors after the public opening, out of sight of public scrutiny and without any legal basis for doing so.

Though Guam Procurement Law and Regulations permit acceptance of minor non-conformities and correction of mathematical errors in a bid submission, these same Laws and Regulations do not allow late bid submissions and corrections/modifications of the type made by GPA in this procurement.

The evidence clearly shows that GPA failed to do a proper evaluation of the Docomo Bid according to applicable Guam Procurement Law and Regulation. The GPA Evaluation process and procedures clearly have compromised the integrity of the procurement process. The mistakes and errors made by GPA should call into question the qualifications of GPA procurement officials or their motivations. Proper Public Bid Opening procedures should not allow any participation in the process by observers and GPA should not have allowed a modification of the Docomo bid prices at any time after bid turn in.

PDS requests that a hearing be held on this matter at the earliest opportunity.

RULING REQUESTED BY THE OPA IN THIS APPEAL:

- A. PDS seeks a *de novo* review of the GPA evaluation, decision and award made in this procurement to Docomo Pacific, Inc regarding bid items A-3, A-4, and A-5.
- B. PDS requests an order from the OPA that rescinds awards that may have or have been made by GPA to Docomo Pacific, Inc. for Bid Items A-3, A-4 and order that GPA make awards to PDS for these service items based on PDS being the lowest bidder.
- C. If GPA will be making a combined award for the WAN Services under this procurement; Bid Items A-3, A-4, A-5, then a determination by the OPA that this award should be made to PDS as the lowest combined bidder for these items.
- D. PDS requests reimbursement of any and all applicable costs as may be determined by the OPA in this matter including its cost for attorney fees.
- E. Any other actions or remedies that the OPA feels are appropriate based upon the OPA's findings in this appeal.

SUMMARY OF SUPPORTING EXHIBITS ATTACHED HERETO:

Exhibit 1: PDS Protest, November 24, 2014

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

Exhibit 2: GPA Protest Decision, May 14, 2015

Exhibit 3: GPA Notice of Intent of Possible Award dated November 13, 2014

Exhibit 4: GPA Bid Abstract for all bidders

Exhibit 5: PDS, Docomo, and GTA Bid Cost Proposal Submissions

Exhibit 6: November 13, 2014 GPA Bid Analysis Memo

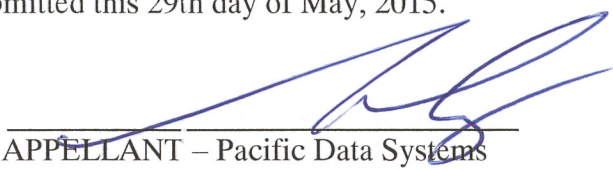
Exhibit 7: John Mantanona statement

Exhibit 8: Audio recording of public opening of IFB Bid GPA-072-14MS

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 29th day of May, 2015.

By: 
APPELLANT – Pacific Data Systems
by John Day, its President