



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

## PROCUREMENT APPEALS

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6 IN THE APPEAL OF,

) **APPEAL NO: OPA-PA-14-013**

7 PACIFIC DATA SYSTEMS, INC.,

) **DECISION**

8  
9 Appellant

### I. INTRODUCTION

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11 This is the Decision of the Public Auditor for appeal number OPA-PA-14-013 which was  
12 filed by PACIFIC DATA SYSTEMS, INC., (Hereafter referred to as "PDS") on December 9,  
13 2014 regarding the GUAM POWER AUTHORITY's (Hereafter referred to as "GPA")  
14 November 21, 2014 denial of PDS' November 17, 2014 Protest concerning Multi-Step IFB  
15 GPA-072-14 (Voice & Data Services) (Hereafter referred to as "IFB"). The Public Auditor  
16 holds that DOCOMO's bid was responsive to the IFB's requirements. Accordingly, PDS' appeal  
17 is hereby DENIED.  
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### II. FINDINGS OF FACT

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20 The Public Auditor in reaching this Decision has considered and incorporates herein the  
21 procurement record and all documents submitted by the parties, and all arguments made during  
22 the February 9, 2015 hearing for Appellant's Appeal. Based on the aforementioned record in this  
23 matter, the Public Auditor makes the following findings of fact:  
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- 26 1. On or about September 18, 2014, GPA issued the IFB.<sup>1</sup>  
27 2. The IFB required, in relevant part, the following:  
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<sup>1</sup> Page 2017, Bid Milestones, IFB, TAB 3, Procurement Record filed on December 18, 2014.

1 a. That the bidders would submit a sealed price proposal for the following  
2 relevant services: (1) A3. 10Mbps Metro Ethernet WAN Sites for GPA's T&D compound to its  
3 Harmon Main Office and from GPA's Cabras compound to its Harmon Main Office; (2) A4.  
4 5Mbps Metro Ethernet WAN sites for GPA's Julale Customer Service Center, the Tenjo Diesel  
5 Power Plant, and GPA's Substations in Hagatna, Talofoto, Apra Heights, Potts Junction,  
6 Umatac, Yigo, and Barrigada; and (3) A5. 4G Mobil Data.<sup>2</sup>

7 b. That the bidders' unpriced technical proposals shall include their company  
8 information such as their names, local addresses, corporate headquarters, and affiliate companies  
9 in support of the performance of the bidders' contractual obligations and the bidders were also  
10 required to provide their business structure with their company information.<sup>3</sup>

11 c. That the bidders' unpriced technical proposals shall include its organizational  
12 structure including the names, designations, qualifications, and responsibilities of the personnel  
13 to be assigned to work on the contract and the qualifications of its affiliates who would perform  
14 the requirements of the contract.<sup>4</sup>

15 d. That the bidders' unpriced technical proposals shall provide documents  
16 showing compliance with federal regulations and applicable laws.<sup>5</sup>

17 e. That the deadline for the bidders to submit their unpriced technical proposals  
18 and their price proposals, in a separate sealed package, was 2:00 p.m. on October 8, 2014.<sup>6</sup>

19 f. That during Phase 1 of the Multi-Step Sealed Bid Procedure, GPA would open  
20 the bidders' unpriced technical proposals, evaluate and score them as either acceptable,  
21 potentially acceptable, or unacceptable, and conduct discussions with the bidders without  
22 disclosing information derived from the unpriced technical proposals of the other bidders.<sup>7</sup>

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26 <sup>2</sup> Pages 2081- 2083, Bid Price Proposal, Id.

27 <sup>3</sup> Page 2027, Paragraph 2.10.1.1.a, Technical Proposal, Id.

28 <sup>4</sup> Page 2027, Paragraph 2.10.1.1.c, Id.

<sup>5</sup> Page 2028, Paragraph 2.10.1.1.e, Id.

<sup>6</sup> Page 2017, Bid Milestones, Id.

<sup>7</sup> Page 2033, Paragraphs 2.11.1 Evaluation of Technical Proposals, 2.11.2 Scoring of Technical Proposals, and 2.11.3 Discussions of Proposals, Id.

1 g. That the bidders who submitted unpriced technical proposals that were scored  
2 as acceptable by GPA, would have their sealed priced proposals opened at 2:00 p.m. on October  
3 20, 2014.<sup>8</sup>

4 h. That GPA would award the contract in whole or per plant location to the  
5 bidder evaluated as qualified and with the best-priced proposal.<sup>9</sup>

6 3. On or about September 22, 2014, GPA issued IFB Amendment No. 1, which, in  
7 relevant part, scheduled a non-mandatory site inspection for prospective bidders on September  
8 23, 2014 and extended the deadline for prospective bidders to submit questions concerning the  
9 IFB to GPA from 5:00 p.m. on September 24, 2014 to 5:00 p.m. on September 29, 2014.<sup>10</sup>

10 4. On or about October 6, 2014, GPA issued IFB Amendment No. 2, which, in relevant  
11 part, answered the questions submitted by prospective bidders, made various changes to parts of  
12 Volume I, Volume II, and the bid price proposal, and which changes relevant to this appeal are  
13 as follows:

14 a. The deadline for receipt of technical proposals and sealed price proposals was  
15 extended from 2:00 p.m. October 8, 2014 to 4:00 p.m. on October 13, 2014.<sup>11</sup>

16 b. The opening of the bidders' price proposals in Phase 2 was rescheduled from  
17 2:00 p.m. on October 20, 2014 to 10:00 a.m. on October 21, 2014.<sup>12</sup>

18 c. The IFB's price proposal was amended so that the bidders would be submitting  
19 priced bids on the following relevant services: (1) A3. 10Mbps Metro Ethernet WAN Sites for  
20 GPA's T&D Compound to its new Fadian Main Office and from GPA's Cabras compound to its  
21 Fadian Main Office; (2) A4. 5Mbps Metro Ethernet WAN sites for GPA's Julale Customer  
22 Service Center, the Tenjo Diesel Power Plant, and GPA's Substations in Hagatna, Talofofu,  
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26 <sup>8</sup> Page 2017, Bid Milestones, and Page 2034, Paragraph 2.12 Step Two  
27 Procedures, and Paragraph 2.12.1 Opening of Price Proposals.

<sup>9</sup> Page 2035, Paragraph 2.13 Award of Contract.

<sup>10</sup> Page 2009, IFB Amendment No. 1 dated September 22, 2014, TAB 4, Id.

<sup>11</sup> Page 1865, Bid Milestones, IFB Amendment No. 2, Id.

<sup>12</sup> Id.

1 Apra Heights, Potts Junction, Umatac, and Yigo; and (3) A5. 30Mbps Metro Ethernet WAN  
2 Sites from GPA's Macheche Substation to its new Fadian Main Office.<sup>13</sup>

3 5. On or about October 10, 2014, GPA issued IFB Amendment No. 3, which amended  
4 various parts of the IFB, and the amendments relevant to this appeal are as follows:

5 a. The deadline for the submittal of Technical and Price Proposals was extended  
6 from 4:00 p.m. on October 13, 2014 to 4:00 p.m. on October 17, 2014.<sup>14</sup>

7 b. The Opening of the Price Proposals was extended from 10:00 a.m., on October  
8 21, 2014 to 10:00 a.m. on October 29, 2014.<sup>15</sup>

9 6. On or about October 16, 2014, GPA issued IFB Amendment No. 4, which answered  
10 additional questions submitted by the prospective bidders and which amended various parts of  
11 the IFB, and the amendments relevant to this appeal are as follows:

12 a. The deadline for the submittal of Technical and Price Proposals was extended  
13 from 4:00 p.m. on October 17, 2014 to 4:00 p.m. on October 24, 2014.<sup>16</sup>

14 b. The Opening of the Price Proposals was extended from 10:00 a.m., on October  
15 29, 2014 to 10:00 a.m. on November 5, 2014.<sup>17</sup>

16 7. On or about 4:00 p.m. on October 24, 2014, GPA received Technical and Price  
17 Proposals from GTA Teleguam Holdings, LLC (Hereafter referred to as "GTA"), PDS, and  
18 Interested Party DOCOMO PACIFIC (Hereafter referred to as "DOCOMO").<sup>18</sup>

19 8. DOCOMO's Technical Proposal included, in relevant part, the following:

20 a. A statement informing GPA that in 2007 NTT DOCOMO acquired two (2)  
21 major local wireless telecommunication companies, HafaTel and GuamCell Communications  
22 and that this merger positioned DOCOMO as Guam's largest wireless mobile and data services  
23 provider with a GSM, 3G, 4G, HSPA & LTE network. This statement also informed GPA that  
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25 <sup>13</sup> Pages 1931 to 1933, Revised Price Proposal, IFB Amendment No. 2 dated  
26 October 6, 2014, Id.

27 <sup>14</sup> Page 1847, Bid Milestones, IFB Amendment No. 3 dated October 10, 2014, Id.  
<sup>15</sup> Id.

28 <sup>16</sup> Page 1839, Bid Milestones, IFB Amendment No. 4 dated October 16, 2014, Id.  
<sup>17</sup> Id.

<sup>18</sup> Page 1743, Abstract of Bids, TAB 12, Id.

1 in 2013 DOCOMO acquired MCV Broadband which gave DOCOMO landline phone, internet,  
2 Cable TV, Fiber Solutions, and Enterprise WiFi Services.<sup>19</sup> Additionally, DOCOMO advised  
3 GPA that its acquisition of MCV Broadband enabled DOCOMO to provide its customers with  
4 Wireless Voice & Data Services, High Speed Internet Data Solutions and business telephone  
5 services/systems (SIP) with long distance capabilities, and diverse true point to point fiber  
6 solutions for primary and redundant connections.<sup>20</sup>

7 b. An organizational design wherein DOCOMO stated that its Network  
8 Administrative Vice President was John Rhee, who serves in this position for both DOCOMO  
9 and MCV.<sup>21</sup>

10 c. The consolidated financial statements of NTT DOCOMO, Inc., which included  
11 its subsidiaries.<sup>22</sup>

12 d. The sworn declaration of its James W. Hofman II, Esq., DOCOMO's Chief  
13 Legal Officer, who stated that DOCOMO operates in full compliance with all federal, territorial,  
14 and local laws, including all federal telecommunications laws under the Federal Communications  
15 Commission (FCC), labor laws, environmental protection, anti-fraud/graft, and all other relevant  
16 regulations.<sup>23</sup>

17 e. The Guam Business License for Guam Telecom, LLC, doing business as MCV  
18 Telecom, for communications common carrier.<sup>24</sup>

19 f. Guam Telecom, LLC's Annual 47 C.R.F. §64.2009(e) CPNI Certification for  
20 2013.<sup>25</sup>

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23 <sup>19</sup> Pages 397 and 501, DOCOMO's Unpriced Technical Offer, TAB 13, Id.

24 <sup>20</sup> Page 450, Id.

25 <sup>21</sup> Pages 401 and 415, Id. NOTE: John Rhee's Resume on page 415 states that he  
26 is employed by DOCOMO/Marianas Cable Vision, and the Public Auditor, pursuant  
to 2 G.A.R., Div. 4, Chap. 12, §12108(h), takes Judicial Notice of the fact  
that on Guam, the acronym "MCV" means Marianas Cable Vision and the Public  
Auditor finds that the terms "MCV" and "Marianas Cable Vision" are  
synonymous.

27 <sup>22</sup> Pages 442 and 551, Report of Independent Registered Accounting Firm, Id.

28 <sup>23</sup> Page 556, Declaration of James W. Hofman II, Federal and Regulatory  
Compliance, Id.

<sup>24</sup> Page 666, Id.

<sup>25</sup> Page 558, Id.

1 g. Guam Telecom, LLC's Certificate of Authority issued by the Guam Public  
2 Utilities Commission (Hereafter referred to as "PUC") which authorizes Guam Telecom, LLC, to  
3 provide resold and local exchange telecommunications services and facilities based local  
4 telecommunications services with Guam.<sup>26</sup>

5 h. Guam Telecom, LLC's Certificate of Authority issued by the PUC which  
6 authorized Guam Telecom, LLC to provide facilities-based and resold special access services in  
7 the form of private line service on Guam.<sup>27</sup>

8 9. GPA's IFB Evaluation Committee met on October 28, 29, and 31, 2014 and evaluated  
9 the Technical Proposals submitted by GTA, PDS, and DOCOMO.<sup>28</sup>

10 10. On or about November 4, 2014, GPA's IFB Evaluation Committee found that the  
11 Technical Proposals submitted by GTA, PDS, and DOCOMO were all acceptable and  
12 recommended that GPA proceed with Phase 2 of the Multi-Step Sealed Bid Solicitation Process  
13 and GPA's General Manager approved this recommendation on November 5, 2014.<sup>29</sup>

14 11. On or about November 6, 2014, GPA notified GTA, PDS, and DOCOMO that GPA  
15 had completed Phase 1 of the Multi-Step Sealed Bid Solicitation Process and that they were  
16 deemed qualified to participate in Phase 2 and that their Priced Bids would be opened at 10:00  
17 a.m. on November 6, 2014.<sup>30</sup>

18 12. On November 6, 2014, GPA opened the Priced Bids and determined, in relevant part,  
19 the following:

20 a. DOCOMO bid the total amounts of \$28,800 for A3, \$67,200 for A4, and  
21 \$28,800 for A5.

22 b. GTA bid the total amounts of \$62,400 for A3, \$153,600 for A4, and \$79,200  
23 for A5.

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25 <sup>26</sup> Page 562, Id.

<sup>27</sup> Page 563, Id.

26 <sup>28</sup> Pages 358, 359, and 343, Sign-in Sheet for GPA Committee Evaluation  
Meeting, TABs 20, 19, and 24, Id.

27 <sup>29</sup> Page 283, GPA Memorandum from Evaluation Committee to General Manager dated  
November 4, 2014, TAB 25, Id.

28 <sup>30</sup> Pages 276, 280, and 282, Letter from John M. Benavente, GPA's Interim  
General Manager to PDS, DOCOMO, and GTA, respectively, dated November 4 and  
5, 2014, TAB 26, Id.

1 c. PDS bid the total amounts of \$44,518.50 for A3, \$89,037.04 for A4, and  
2 \$35,614.80 for A5.<sup>31</sup>

3 13. On or about November 13, 2014, GPA's Bid Evaluation Committee recommended,  
4 in relevant part, that DOCOMO be awarded A3, A4, and A5, and GPA's General Manager  
5 approved this recommendation that same day.<sup>32</sup>

6 14. On November 13, 2014, GPA issued a Bid Status notifying PDS that its bid for A3,  
7 A4, and A5 was rejected due to PDS' high price and that GPA was going to award the contract  
8 for those portions of the IFB to DOCOMO.<sup>33</sup>

9 15. On November 17, 2014, four (4) days after receiving the aforementioned Bid Status,  
10 PDS filed a protest with GPA alleging, in relevant part, that it would be illegal for DOCOMO to  
11 provide the services required by A3, A4, and A5 because DOCOMO lacks the regulatory  
12 authorizations for these services.<sup>34</sup>

13 16. On November 21, 2014, GPA denied PDS' protest on the grounds that: (1)  
14 DOCOMO submitted its Certificate of Authority granted by the PUC to provide the services  
15 required for A3, A4, and A5; and (2) GPA should award DOCOMO A3, A4, and A5 because  
16 DOCOMO submitted the lowest responsive bid, and PDS received this denial that same day.<sup>35</sup>

17 17. On December 9, 2014, PDS filed this appeal.<sup>36</sup>

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19 <sup>31</sup> Page 210, GPA Memorandum from Buyer Supervisor I to General Manager dated  
20 November 10, 2014, TAB 34, Id.

21 <sup>32</sup> Page 197 to 198, GPA Memorandum from Bid Evaluation Committee to General  
22 Manager dated November 13, 2014, Id.

23 <sup>33</sup> Page 201, Bid Status dated November 13, 2014, TAB 35, Id.

24 <sup>34</sup> Page 183 to 184, DOCOMO Protest Letter dated November 17, 2014, TAB 37, Id.

25 <sup>35</sup> Page 168 to 169, GPA's Denial of Procurement Protest dated November 21,  
26 2014, TAB 38, Id.

27 <sup>36</sup> Although this appeal was filed 18 days after PDS received GPA's Protest  
28 Denial and exceeds the 15 day period set forth in 5 G.C.A. §5425(e), it  
remains timely pursuant to 2 G.A.R., Div. 4, Chap. 12, §12102(g), which  
states that in computing time limits the day of the act from which the time  
period shall not be counted and that the last day of the time period shall be  
computed unless it is a Saturday, Sunday, a legal holiday, or when the Office  
of Public Accountability is closed by the Governor, in which event a period  
extends until the end of the next day that is not a Saturday, Sunday,  
holiday, or day the OPA is closed. Here the last day of PDS' 15 day period  
to file an appeal expired on Saturday, December 6, 2014, and was extended  
over Sunday, December 7, 2014, and Monday, December 8, 2014 because that day  
was Our Lady of Camarin Day, a legal holiday on Guam pursuant to 1 G.C.A.

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### III. ANALYSIS

Pursuant to 5 G.C.A. §5703, the Public Auditor shall review GPA's November 21, 2014 Decision denying PDS' November 17, 2014 protest *de novo*. The two main issues in this appeal are: (1) Whether it would be illegal for DOCOMO to provide the services required by A3, A4, and A5 of the IFB; and (2) Whether GPA was correct in finding that DOCOMO's bid was responsive when it denied PDS' November 17, 2014 Protest. The OPA must also determine whether GPA violated the automatic stay by issuing small purchase solicitations after PDS filed its protest and this appeal.

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**A. The OPA lacks the Jurisdiction to determine whether it would be illegal for DOCOMO to provide the regulated services required by A3, A4, and A5 of the IFB.**

PDS' protest was based on its allegation that that DOCOMO has not been authorized by the PUC, via a Certificate of Authority, to provide the intra-state telecommunications data services required by A3, A4, and A5 of the IFB.<sup>37</sup> The PUC defines telecommunication services as offering telecommunications between originating and terminating points in Guam, for a fee directly to the general public or such classes of users as to be effectively available directly to the public regardless of the facilities used. 12 G.C.A. §12202(i). The PUC is the administrative body that regulates telecommunication services on Guam. No person shall provide or resell telecommunications services in Guam without a Certificate of Authority issued by the PUC, except that a Certificate of Authority shall not be required for any person to provide mobile service. 12 G.C.A. §12203(a). Additionally, it is the PUC that is statutorily empowered to hear complaints from interested persons concerning violations of the Guam Telecommunications Act of 2004, or any of the PUC's rules, regulations, or orders. 12 G.C.A. §12207(a). Further, after the PUC conducts a hearing on such a complaint and finds that a violation of the Guam

28 §1000(a)(11). Accordingly, the Public Auditor finds PDS appeal to be timely filed.

<sup>37</sup> Page 1, Line 19 to 20, PDS Hearing Brief filed on February 6, 2015.



1 Telecommunications Act of 2004 or any of the PUC's rules, regulations, or orders has occurred,  
2 it is the PUC that is statutorily empowered to impose a penalty or institute a court proceeding for  
3 injunctive relief to compel compliance with the Act, or any of the PUC's rules, regulations, or  
4 orders. 12 G.C.A. §12208(a) and (c).

5 Here, as stated above, A3 solicited for a 10Mbps Metro Ethernet WAN Sites for GPA's  
6 T&D compound to its new Fadian Main Office and from GPA's Cabras compound to its Fadian  
7 Main Office, A4 solicited for a 5Mbps Metro Ethernet WAN sites for GPA's Julale Customer  
8 Service Center, the Tenjo Diesel Power Plant, and GPA's Substations in Hagatna, Talofoto,  
9 Apra Heights, Potts Junction, Umatac, and Yigo and A5 solicited for a 30 Mbps Metro Ethernet  
10 WAN Sites from GPA's Macheche Substation to its new Fadian Main Office.<sup>38</sup> PDS readily  
11 admits that Guam Telecom LLC, the corporate entity whose Business License and PUC  
12 Certificate of Authority DOCOMO included in its bid as stated above, has the required authority  
13 to provide telecommunications services on Guam and PDS also admits that Guam Telecom LLC,  
14 is an affiliate company of DOCOMO.<sup>39</sup> Additionally, interested party DOCOMO admits that its  
15 Technical Proposal states that it would provide the services solicited for by the IFB through its  
16 certified affiliate companies.<sup>40</sup>

17 Hence, PDS' allegation is tantamount to a subtle invitation for the OPA to decide on or  
18 make an administrative finding that DOCOMO's use of its licensed and authorized affiliate  
19 companies to provide the regulated telecommunications services violates the Guam  
20 Telecommunications Act of 2004 or a PUC rule, regulation, or order. However, there has been  
21 no evidence presented by any party in this matter that the PUC has exercised its jurisdiction to  
22 enforce the Act or any of its rules, regulations, or orders, and made an administrative finding that  
23 DOCOMO or Guam Telecom LLC, is in violation of them. Without such a finding by the PUC,  
24 the OPA must decline PDS' invitation to administratively decide the issue of whether DOCOMO  
25 can use its certified and licensed affiliate companies to provide telecommunication services on  
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28 <sup>38</sup> Pages 1931 to 1933, Revised Price Proposal, IFB Amendment No. 2 dated October 6, 2014, TAB 2 to 4, Procurement Record Filed on December 18, 2014.

<sup>39</sup> Page 1, Line 23, Appellant's Hearing Brief filed on February 6, 2015.

<sup>40</sup> Page 3, Line 11, DOCOMO's Hearing Brief filed on February 6, 2015.

1 Guam. Therefore, the Public Auditor finds that it lacks the jurisdiction to decide that issue  
2 because such jurisdiction rests with the PUC pursuant to 12 G.C.A. §12203(a), 12 G.C.A.  
3 §12207(a), and 12 G.C.A. §12208(a) and (c). The Public Auditor will now review the second  
4 issue which is whether GPA was correct in finding that DOCOMO's bid was responsive when it  
5 denied PDS' November 17, 2014 Protest.

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7 **B. DOCOMO was a responsive bidder.**

8 The main issue in this matter is whether DOCOMO submitted a responsive Technical  
9 Proposal because PDS claims that DOCOMO failed to provide detailed information about its  
10 affiliate Guam Telecom L.L.C., as required by the IFB.<sup>41</sup> Specifically, PDS alleges that  
11 DOCOMO's technical offer only contained information about itself and not the affiliate  
12 companies that it would use to provide the services required by the IFB.<sup>42</sup> As stated above, the  
13 IFB used the Multi-Step Invitation for Bid Process which has two (2) phases, in which the  
14 technical proposals of the bidders are evaluated by the purchasing agency to determine whether  
15 they are acceptable, and after the completion of this phase, the Procurement Officer initiates the  
16 second which involves opening the bidders' priced bids which is conducted as in any other  
17 competitive sealed bid procurement. 2 G.A.R., Div. 4, Chap. 3, §3109(V)(1) & (2). This means  
18 that once the bids are opened, the contract shall be awarded with reasonable promptness by  
19 written notice to the lowest responsive and responsible bidder whose bid meets the requirements  
20 and criteria set forth in the invitation for bids. 5 G.C.A. §5211(g) and 2 G.A.R., Div. 4, Chap. 3,  
21 §3109(n)(1). A responsive bidder means a person who has submitted a bid which conforms in  
22 all material respects to the invitation for bids. 5 G.C.A. §5201(g).

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28 <sup>41</sup> Page 1, Line 27, Appellant's Hearing Brief filed on February 6, 2015.

<sup>42</sup> Testimony of John Day, President PDS, February 9, 2015 Hearing Re Appellant's Appeal.

1           When GPA denied PDS' November 17, 2014 Protest, GPA found that DOCOMO was a  
2 responsive bidder and the record supports this finding. Here, as stated above, the IFB required  
3 the bidders to submit unpriced technical proposal in Phase 1 of the solicitation process that  
4 included their company information such as their names, local addresses, corporate headquarters,  
5 and affiliate companies in support of the performance of the bidders' contractual obligations and  
6 business structure. As stated above, DOCOMO's technical proposal stated that DOCOMO,  
7 through its mergers with HafaTel, GuamCell Communications, and MCV Broadband, could  
8 provide GPA with wireless mobile and data services, landline phone, internet, Cable TV, Fiber  
9 Solutions, and Enterprise WiFi Services, Wireless Voice & Data Services, High Speed Internet  
10 Data Solutions, SIP with long distance capabilities, and diverse true point to point fiber solutions  
11 for primary and redundant connections. Additionally, DOCOMO included the consolidated  
12 financial statements of NTT DOCOMO, Inc., which included its subsidiaries. The Public  
13 Auditor finds that DOCOMO complied with the IFB by providing this statement and specifying  
14 that it would provide the services required by the IFB via its affiliate companies that it obtained  
15 through the mergers. As stated above, the IFB required the bidders to submit technical proposals  
16 that described their organizational structure including the names, designations, qualifications,  
17 and responsibilities of the personnel to be assigned to work on the contract and the qualifications  
18 of its affiliates who would perform the requirements of the contract, and documents showing  
19 compliance with federal regulations and applicable laws. As stated above, DOCOMO's  
20 technical proposal contained an organizational design wherein DOCOMO stated that its Network  
21 Administrative Vice President was John Rhee, who serves in this position for both DOCOMO  
22 and MCV, and DOCOMO also provided the Business Licenses and PUC Certificate of Authority  
23 for Guam Telecom LLC, which is a subsidiary of MCV, as well as the declaration of  
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1 DOCOMO's Chief Legal Officer stating that DOCOMO operates in full compliance with all  
2 federal, territorial, and local laws, including all federal telecommunications laws under the  
3 Federal Communications Commission (FCC), labor laws, environmental protection, anti-  
4 fraud/graft, and all other relevant regulations. Therefore, the Public Auditor finds that the record  
5 supports GPA's determination that DOCOMO was a responsive bidder. The Public Auditor will  
6 now review whether GPA violated the automatic stay.  
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10 **C. GPA did not violate the automatic stay.**

11 PDS also alleges that GPA violated the automatic stay by issuing Requests for Quotation  
12 for the same services A3, A4, and A5 of the IFB was soliciting for after PDS filed its November  
13 17, 2015 Protest and this appeal.<sup>43</sup> Although not part of PDS' November 17, 2014 protest, the  
14 Public Auditor can decide this issue because claims concerning automatic stay violations can  
15 only arise after a party has filed a procurement protest or appeal of an agency's denial of a  
16 procurement protest and enforcement of the automatic stay during the pendency of a protest,  
17 appeal, or judicial review of an appeal decision is necessary to preserve the integrity of the  
18 procurement process and the purposes of Guam's Procurement Law. 5 G.C.A. §5703.

19 Generally, in the event of a timely protest, the purchasing agency shall not proceed further with  
20 the solicitation or award of the contract prior to final resolution of such protest, and any such  
21 further action is void unless the head of the purchasing agency and the Attorney General of  
22 Guam, make written determinations that award of the contract without delay is necessary to  
23 protect substantial interests of the Government of Guam, and the protestant is given at least two  
24 (2) days prior notice. 5 G.C.A. §5425(g).

25 Here, after PDS filed this appeal, GPA issued Requests for Quotation (RFQs) to provide  
26 various telecommunication services for a thirty (30) day period and these services were similar to

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27 <sup>43</sup> Page 3, Line 8 and 19 to 21, Appellant's Hearing Brief filed on February 6,  
28 2015

1 the services solicited for in A3, A4, and A5 of the IFB.<sup>44</sup> The Public Auditor finds that GPA's  
2 RFQs are not violations of the automatic stay because the thirty (30) day contract terms GPA  
3 solicited for in these RFQs are not the same as the three (3) year contracts terms required by A3,  
4 A4, and A5. GPA's use of RFQs is authorized by the small purchase solicitation process and  
5 GPA is subject to the restrictions of this process. Specifically, GPA is prohibited from  
6 artificially dividing the three (3) year contract period for the services solicited by A3, A4, and A5  
7 of the IFB. 5 G.C.A. §5213. Further, the cost of the services GPA receives from these RFQs  
8 must be less than \$15,000. 2 G.A.R, Div. 4, Chap. 3, §3111(a). The small purchase solicitation  
9 process may prove a quick-fix to allow GPA to obtain the critical communications services that  
10 it needs to operate Guam's electrical power generation, transmission, and distribution systems,  
11 however, its limitations prevent GPA using it as a long-term solution. If the automatic stay in  
12 this matter becomes protracted, GPA must comply with Guam's Procurement Law by following  
13 the procedures set forth in 5 G.C.A. §5425(g) to lift the automatic stay. Accordingly, the Public  
14 Auditor finds that GPA did not violate the automatic stay imposed by 5 G.C.A. §5425(g) by  
15 using the small purchase solicitation process set forth in 5 G.C.A. §5213 and 2 G.A.R, Div. 4,  
16 Chap. 3, §3111 to obtain temporary communications services for thirty (30) day periods.

#### 17 18 **IV. CONCLUSION**

19 Based on the foregoing, the Public Auditor hereby determines the following:

- 20 1. The Public Auditor lacks the jurisdiction to determine the issue of whether DOCOMO  
21 can use its certified and licensed affiliate companies to provide telecommunication services on  
22 Guam because such jurisdiction rests with the PUC pursuant to 12 G.C.A. §12203(a), 12 G.C.A.  
23 §12207(a), and 12 G.C.A. §12208(a) and (c).
- 24 2. The record supports GPA's determination that DOCOMO was a responsive bidder.

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<sup>44</sup> Testimony of John Day, President of PDS, February 9, 2015 Hearing Re  
Appellant's Appeal.


1           3. GPA did not violate the automatic stay imposed by 5 G.C.A. §5425(g) by using the  
2 small purchase solicitation process set forth in 5 G.C.A. §5213 and 2 G.A.R, Div. 4, Chap. 3,  
3 §3111 to obtain temporary communications services for thirty (30) day periods.

4           4. PDS' Appeal is hereby DENIED.

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

9           A copy of this Decision shall be provided to the parties and their respective attorneys, in  
10 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website  
11 [www.opaguam.org](http://www.opaguam.org).

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13           **DATED** this 11<sup>th</sup> day of March, 2015.

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19           DORIS FLORES BROOKS, CPA, CGFM  
20           PUBLIC AUDITOR  
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