

1 **D. GRAHAM BOTHA, ESQ.**
2 **Guam Power Authority**
3 **688 Route 15, Suite 302**
4 **Mangilao, Guam 96913**
5 **Ph: (671) 648-3203/3002**
6 **Fax: (671) 648-3290**

7
8 *Attorney for the Guam Power Authority*
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FILE NO OPA-PA: 15-007

10 **OFFICE OF THE PUBLIC AUDITOR**
11 **PROCUREMENT APPEALS**
12

13 IN THE APPEAL OF) **DOCKET NO. OPA-PA-15-007**
14)
15 PACIFIC DATA SYSTEMS, INC.) **APPELLEE'S HEARING BRIEF**
16)
17 Appellant.)
18 _____)
19

20
21 **COMES NOW**, the GUAM POWER AUTHORITY, by and through its counsel of
22
23 record, D. GRAHAM BOTHA, ESQ., and submits its Hearing Brief for the August 20, 2015,
24 hearing as follows.

25 **ARGUMENT**

26 Guam Power Authority (GPA) submits that it properly awarded items A1-A5 to Docomo
27 Pacific Inc. (Docomo), the lowest responsive and responsible bidder. A responsive bidder is a
28 person who submitted a bid which conforms in all material respects to the Invitation for Bids. 5
29 GCA §5102(g), 2 GAR Div. 4, §3109(n)(2). PDS admits that Docomo was the lowest responsive
30 bidder for items A-1 and A-2, but contends now that PDS is the lowest bidder for items A-3 and
31 A-4, and admits that PDS is not the lowest bidder for item A-5. PDS contends that despite the
32 clear language of the bid that each item is evaluated separately, it believes that items A-3, A-4 and
33 A-5 should be grouped together.

1 After reviewing the technical qualification of all bidders, GPA determined that the proposal
2 submitted by Docomo for items A-1, A-2, A-3, A-4, and A-5 was the lowest bid, and the proposal
3 submitted by PDS for items A-6, and A-7 to A-13 was the lowest bid.

4 PDS also asserts that GPA allowed an improper bid modification of Docomo's bid for
5 items A-3 and A-4 after bid opening. This is based on a verbal statement allegedly made by a
6 Docomo representative at the bid opening. There is no evidence submitted that shows either that
7 the Docomo representative had the authority to modify any bid as alleged, or that GPA acted in
8 any manner in reliance on those alleged statements.

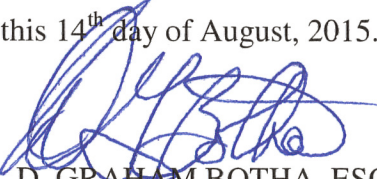
9 In fact, it is clear under the documents submitted by Docomo that the bid price was "per
10 site". The declaration of James Hoffman submitted establishes that included with the Docomo bid
11 was a spreadsheet that indicates "per site" as the bid price. It is clear from the bid specifications
12 that each line item for A3, A4, and A5 is evaluated separately. On November 6, 2015, GPA asked
13 for clarification from PDS and GTA regarding several line items, specifically items A3 and A4.
14 PDS submitted a response on November 7 to GPA, and with regard to A3 its response is as
15 follows: "Each site is counted as one site (Fadian to Cabras = 1 site, T&D to Fadian = 1 site);
16 **price shown on the PDS bid form is per site.**" With regard to A4 (which has 8 sites) its response
17 is "**Yes, the price listed is per site.**"

18 The Abstract of Bids lists the price proposals for all three bidders for the different line
19 items. Only with the price clarifications provided by PDS and GTA, was the evaluation committee
20 able to properly provide an analysis of the price proposals. GPA should have disqualified both
21 PDS and GTA based on the deficient price proposals submitted that failed to provide specific line
22 item prices as requested in the IFB. Specifically, it is clear the Docomo provided the lowest
23 responsive price for items A1-A6, and GPA made the evaluation according to the evaluation
24 criteria specified in the IFB.

1 On the abstract Docomo properly included the price for both sites at \$7,200 per year for 3
2 years or a total of \$21,600. As PDS indicated in its response its price of \$6,000; \$5,700; and
3 \$5,415.25 for 3 years was per site, so the actual price for both sites as requested by GPA is
4 \$17,115 x 2 sites = \$34,230 for 3 years. Clearly under any mathematical calculations, the Docomo
5 bid of \$21,600 for 3 years is lower than the total PDS bid for 2 sites of \$34,230. Similarly, in item
6 A4, the Docomo bid was \$16,800 per year for 3 years for a total of \$50,400. The PDS bid was
7 \$3,000; \$2,850; and \$2,707.50 or a total of \$8,557.50 for 3 year **per site**. Since there are 8 sites
8 for item A4, then the actual PDS bid is \$8,557.50 x 8 = \$68,460 which is once again greater than
9 the Docomo bid of \$50,400 for 3 years. While PDS concedes it was not the low bidder for item
10 A5, the bid abstract is clear: Docomo is \$7,200 per year or a total of \$21,600 for 3 years and PDS
11 is \$9,600; \$9,120; and \$8,664 for a total of \$27,384. Again, Docomo is the low bidder for item A5
12 as \$21,600 is less than \$27,384.

13 GPA properly made an award to Docomo for line items A1-A5, as it deemed Docomo the
14 lowest, **responsive** and responsible bidder for each line item in A1-A5 as specified in the IFB.

15 **RESPECTFULLY SUBMITTED** this 14th day of August, 2015.

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20 D. GRAHAM BOTHA, ESQ.
 GPA Legal Counsel