

1 **GUAM DEPARTMENT OF EDUCATION**  
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4 *Attorney for Guam Department of Education*

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 5/24/16

TIME: 4:05  AM  PM BY: Thyza

FILE NO OPA-PA: 16-004

6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

8 IN THE APPEAL OF

9 TECHNOLOGIES FOR TOMORROW, INC.

10 Appellant.

APPEAL NO.: OPA-PA-16-004

**SUBMISSION OF AGENCY REPORT**

11  
12 The Guam Department of Education ("GDOE"), the purchasing agency in this matter,  
13 hereby submits the following exhibits as the Agency Report required by 2 GAR §12105:

14 a. A copy of the protest.

15 *A copy of the protest is included in the Procurement Record as Exhibit 19, Bates*  
16 *Stamp Nos. GDOE 0841-1002.*

17 b. A copy of the bid or offer submitted by the Appellant and a copy of the bid or  
18 offer that is being considered for award or whose bid or offer is being protested, if any had been  
19 submitted prior to the protest.

20 *A copy of the Appellant's bid is included in the Procurement Record as Exhibit*  
21 *11, Bates Stamp Nos. GDOE 0223-0370.*

22 *A copy of the Docomo Pacific Inc.'s bid is included in the Procurement Record*  
23 *as Exhibit 12, Bates Stamp Nos. GDOE 0371-0602.*

24 c. A copy of the solicitation, including the specifications or portions thereof relevant  
25 to the Appeal:

26 *A copy of GDOE IFB 010-2016 and all Addendums are included in the*  
27 *Procurement Record as Exhibit 7, Bates Stamp Nos. GDOE 0013-0217.*

1  
2 d. A copy of the abstract of bids or offers or relevant or portions thereof relevant to  
3 the protest.

4 *A copy of the Abstract of Bidders is included in the Procurement Record as*  
5 *Exhibit 15, Bates Stamp Nos. GDOE 0615-0657.*

6 e. Any other documents which are relevant to the protest; including the contract, if  
7 one has been awarded, pertinent amendments, and plans and drawings.

8 *Exhibit 21 Declaration Re: Agency Report (Vincent Dela Cruz)*  
9 *Bates Stamp Nos. GDOE 1009-1010*

10 *Exhibit 22 Declaration Re: Agency Report (Carmen T. Taitano)*  
11 *Bates Stamp Nos. GDOE 1011-1012*

12 f. The decision from which the Appeal is taken, if different than the decision  
13 submitted by Appellant.

14 *A copy of the Response to Protest is included in the Procurement Record as*  
15 *Exhibit 19, Bates Stamp Nos. GDOE 0841-1002.*

16 g. A statement answering the allegation of the Appeal and setting forth findings,  
17 actions, and recommendations in the matter together with any additional evidence or information  
18 deemed necessary in determining the validity of the Appeal. The statement shall be fully  
19 responsive to the allegations of the Appeal.

20 *Exhibit 23 GDOE's Agency Statement*  
21 *Bates Stamp Nos. GDOE 1013-1023*

22 h. If the award was made after receipt of the protest, the report will include the  
23 determination required under 2 GAR §9101(e).

24 *Not applicable.*

25 i. A statement in substantially the same format as Appendix B to this Chapter,  
26 indicating whether the matter is the subject of a court proceeding.

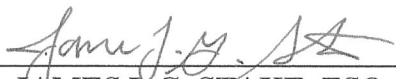
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**Exhibit 24 Declaration Regarding Court Action  
Bates Stamp Nos. GDOE 1024**

Dated this 24<sup>th</sup> day of May, 2016.

Respectfully submitted,

**GUAM DEPARTMENT OF EDUCATION**

By:   
\_\_\_\_\_  
**JAMES L.G. STAKE, ESQ.**  
*Legal Counsel*

# **Exhibit 21**

1 **GUAM DEPARTMENT OF EDUCATION**

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7 *Attorney for Guam Department of Education*

8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

9 IN THE APPEAL OF

10 Technologies for Tomorrow, INC,

11 Appellant.

12 APPEAL NO.: OPA-PA-16-004

13 **DECLARATION RE: AGENCY REPORT**

14 I, Vincent Dela Cruz, declare as follows:

15 1. I am currently employed as the Data Processing Manager with the Division of  
16 Financial, Student and Administrative Information Systems within the Guam Department of  
17 Education.

18 2. To my knowledge and belief, the information herein is true and correct.

19 3. As part of my work duties, I am familiar with the requirements for the Guam  
20 Department of Education ("GDOE") and for the "E-Rate" program including Wireless Local  
21 Area Network installations.

22 4. I worked on and helped prepare GDOE IFB 010-2016. I am aware of  
23 requirements of the IFB.

24 5. I have reviewed submission bids for IFB 010-2016 by both Technologies for  
25 Tomorrow, Inc. (TFT) and Docomo Pacific (Docomo).

26 6. I have reviewed the Protest as well as the appeal by TFT.

27 7. GDOE acknowledges that the model number initially published at section  
28 D.5.1.3.1 was incorrect where it stated Brocade ICX6540-24P switch, 24 port, 1 GB, PoE  
+390W, 2x1GSFP or approved equivalent or better with two SFP multi-mode fiber uplink. It

1 should have read as it did in addendum 2 listed it; D.5.1.3.1 to read Brocade ICX6450-24P, 24-  
2 port 1 GbE switch PoE + 390W. 2x1 GbE SFP+ and 2x10 GbE SFP+ uplink/stacking ports (1  
3 GbE SFP+ upgradable to 10 GbE) or approved equivalent or better.

4 8. TFT's email with Adam Burton at Exhibit D, contemplates Access Points (APs)  
5 quantity which is different from End User points. TFT mistakenly analyzes the Access Points  
6 quantity deployment model. Section D.5.2.3.1 is for specified number of User End Points.

7 9. The purpose of Section D.5.1.6.4 Fiber patch cable (LC to SC) was for GDOE's  
8 other section D.6.1. In each school, there is spare pair of fibers terminated in a fiber enclosure  
9 with SC fiber optic adapter panel. I have reviewed the illustration TFT provides at Exhibit F in  
10 TFT's Appeal. The illustrations by TFT can not be used for the requirements of D.5.1.6.4 and  
11 D.6.1. TFT's assumptions of the configuration and use of the Fiber patch cable is incorrect and  
12 not GDOE's intended use.

13 10. The purpose of D.7.1 was to provide GDOE with information if the equipment  
14 being proposed by the Bidder is of the same make model or an equivalent to the WLAN  
15 equipment currently in GDOE WLAN infrastructure.

16 11. After reviewing Docomo's bid, I found that it was responsive to GDOE's IFB.

17  
18 I declare under penalty of perjury under the laws of Guam that the foregoing is true and  
19 correct to the best of my knowledge.

20 Dated this 24<sup>th</sup> day of May, 2016.

21  
22   
VINCENT DELA CRUZ

# **Exhibit 22**

1 **GUAM DEPARTMENT OF EDUCATION**  
2 **JAMES L.G. STAKE, Legal Counsel**  
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7 *Attorney for Guam Department of Education*

8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

9 IN THE APPEAL OF  
10 Technologies for Tomorrow, INC,  
11 Appellant.

12 APPEAL NO.: OPA-PA-16-004

13 **DECLARATION RE: AGENCY REPORT**

14 I, Carmen T. Taitano, declare as follows:

15 1. I am currently employed as the Supply Management Administrator with the  
16 Division of Procurement and Office of Supply Management within the Guam Department of  
17 Education.

18 2. To my knowledge and belief, the information herein is true and correct.

19 3. As part of my work duties, I supervise Procurement and Solicitations for the Guam  
20 Department of Education, and I am familiar with the requirements for the Guam Department of  
21 Education ("GDOE") and for Education Rate ("E-Rate") programs including Wireless Local Area  
22 Network installations, specifically GDOE IFB 010-2016.

23 4. I worked on and helped prepare GDOE IFB 010-2016. I am aware of requirements  
24 of the IFB.

25 5. I have reviewed submission bids for IFB 010-2016 by both Technologies for  
26 Tomorrow, Inc. (TFT) and Docomo Pacific (Docomo).

27 6. I have reviewed the Protest as well as the appeal by TFT.

28 7. I have reviewed the amendments (addenda) to IFB 010-2016.



1           8.       The purpose for the amendments was to advise the prospective bidders of any  
2 changes made to the IFB.

3           9.       The purpose specifically for amendment 2 was to answer questions submitted by  
4 prospective bidders which caused changes to bid specifications.

5           10.      By prospective bidders acknowledging the amendment it indicated the prospective  
6 bidder received the amendment and intends to be bound by its terms.

7           11.      Based on Docomo's acknowledgement of Amendment No. 2, GDOE concluded that  
8 the bidder would be bound by its terms. Therefore, we intend to award the contract to the lowest,  
9 most responsive, and responsible bidder, Docomo Pacific.

10  
11           I declare under penalty of perjury under the laws of Guam that the foregoing is true and  
12 correct to the best of my knowledge.

13           Dated this 24<sup>th</sup> day of May, 2016.

14  
15  
16           

17           \_\_\_\_\_  
18           CARMEN T. TAITANO

# **Exhibit 23**

1 **GUAM DEPARTMENT OF EDUCATION**

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8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

9 IN THE APPEAL OF

APPEAL NO.: OPA-PA-16-004

10 TECHNOLOGIES FOR TOMORROW, INC.

**AGENCY STATEMENT**

11 Appellant.

12 Comes now the Guam Department of Education (GDOE) by and through its counsel and files  
13 its Agency Report and Statement pursuant to 2 G.A.R. § 12105(g) in response to appeal by  
14 Technologies for Tomorrow, Inc. (TFT).

15 **I. BACKGROUND**

16 **A. GDOE IFB 010-2016**

17 This appeal corresponds to the GDOE E-Rate Network (GENET) 2016- E-Rate  
18 Internal Connections – Wireless Local Area Network (WLAN) Installation Services IFB No. 010-  
19 2016. GDOE sought a vendor capable of expanding the WLAN infrastructure at the follow GDOE  
20 schools: 1) G. Washington High School; 2) Okkodo High School; 3) Southern High School; 4) J.F.  
21 Kennedy High School; 5) Tiyan High School; 6) A. Johnston Middle School; 7) Astumbo Middle  
22 School; 8) F.B. Leon Guerrero Middle School; 9) Inarajan Middle School; 10) J. Rios Middle School;  
23 11) L.P. Untalan Middle School; 12) Oceanview Middle School; and 13) W. Benavente Middle  
24 School. The GDOE WLAN system has been designed to support the WLAN expansion to increase  
25 the Wi-Fi coverage in all schools. See Exhibit 7, GDOE bates stamp p. 14.

26 **B. Amendments (Addenda)**

27 On January 12, 2016, GDOE issued Addendum 1 that provided dates for the Pre-Bid  
28 Conference and Site Visits.

1 On January 26, 2016 GDOE issued Addendum 2 that made several revisions to IFB  
2 010-2016 and provided responses to questions from TFT and Docomo Pacific (Docomo).

3 On February 4, 2016 GDOE issued Addendum 3 that provided sign-in sheets for the  
4 Pre-Bid Conference/Site Visit that occurred on Thursday January 14, 2016 and Friday, January 15,  
5 2016. Ex. 7, GDOE p. 141-222.

6 **C. Current Bid Status**

7 On March 4, 2016, GDOE issued Bid Status for GDOE IFB 010-2016 recommending  
8 an award to Docomo. Docomo provided a bid total of **\$430,688.26** and TFT provided a bid total of  
9 **\$503,677.00**, a difference of **\$72,988.74**. Ex. 14, GDOE p. 612.

10 **D. Procedural history**

11 On March 25, 2016, TFT protested the recommended award for GDOE IFB 010-2016.  
12 On March 28, TFT supplemented its protest in response to a FOIA request to GDOE. On March 28,  
13 2016, GDOE issued a Notice of Stay of Procurement. On April 22, 2016 GDOE denied TFT's protest  
14 in its' entirety and advised TFT of its right to seek administrative or judicial review. Ex. 19, GDOE  
15 p. 841-1002.

16 **II. ARGUMENT**

17 **A. GDOE Properly Determined that Docomo was the Lowest Responsive and**  
18 **Responsible Bidder Pursuant to Guam Law and Analogous Case Law**

19 Docomo's bid was the lowest responsive and responsible bid and Docomo was  
20 correctly recommended for award. According to section 2.4.1 of IFB 10-2016, determination of an  
21 award pursuant to this IFB will be made based on the lowest responsive and responsible bidder. Ex. 7  
22 GDOE p. 20. ~~In determining the lowest responsive bidder, GDOE will be guided by a) price of~~  
23 ~~overall performance and delivery and b) responsiveness to the requirements of the IFB. *Id.* Docomo~~  
24 ~~provided the lowest bid price of \$430,688.26 compared to TFT's \$503,677.00.~~

25 A Responsive bidder means a person who has submitted a bid that conforms in all  
26 material respects to the Invitation to Bids. 5 GCA §5201(g). A responsible bidder or offeror means a  
27 person who has the capability in all respects to perform fully the contract requirements, and the

1 integrity and reliability which will assure good faith performance. 5 GCA §5201(f). See also 2 GAR  
2 Div. 4 §1106(27). Capability as used in 2 GAR §1106(27) (Definitions, Responsible Bidder or  
3 Offeror) of these Regulations, means capability at the time of award of the contract. 2 GAR  
4 §3101(1).

5           Docomo's bid did not substantially differ in any material respects to the IFB. Any  
6 equipment deficiencies with Docomo's bid would go to Docomo's responsibility and Docomo's  
7 capability to perform fully the contract requirements, and capability would be determined at the time  
8 of award of the contract. Therefore, GDOE determined that Docomo was responsive. Other Courts  
9 have determined that bidders similar to Docomo are responsive under similar circumstances where a  
10 petitioner alleged that an opposing bidder such as Docomo did not supposedly submit sufficient  
11 equipment or equipment data prior to the time of award of the contract.

12           In *Browning Ferris Inc. v. State of Hawaii, Department of Transportation*, Petitioner  
13 Browning-Ferris Industries (Browning) contested the proposed award to KNG Group (KNG)  
14 pertaining to Furnishing Refuse Collection and Disposal Service at the Honolulu International  
15 Airport. PCH-2000-4 p. 1. On August 19, 1999, bids were opened. KNG's bid was the lowest bid  
16 submitted at \$1,311,690 and Browning's bid was \$1,558,332. *Id.* at 3. As of August 19, 1999,  
17 Browning protested that KNG was not a responsible bidder because KNG did not own any refuse  
18 collection trucks or any refuse collection containers, or own any necessary equipment. As of August  
19 19, 1999, KNG did not have any employees, any insurance covering collection trucks, KNG did not  
20 have a commercial vehicle operating permit with the Public Utilities Commission or a refuse  
21 collection permit. On October 28, 1999, Government solicitor issued a cover letter that stated KNG  
22 was the intended project subcontractors. On February 10, 2000, KNG represented that KNG would  
23 be able to start the project within eight (8) weeks. The Hearing Officer determined that responsibility  
24 refers to a bidder's apparent ability and capacity to perform the contract requirements and is  
25 determined not at bid opening but at any time prior to award based on any information received by the  
26 agency up to that time. *Id.* at 7. The Hearing Officer also stated that a responsible bidder is a person  
27 who has the capability in all respects to perform fully the contract requirements, and the integrity and

1 reliability which will assure good faith performance. Capability refers to capability at the time of  
2 award of contract. This language of Capability mirrors the language used on Guam. 2 GAR  
3 §3101(1). In *Browning*, the Hearing Officer found accordingly these definitions are consistent with  
4 the foregoing authorities and buttress the conclusion that responsibility may be determined at any time  
5 up to the awarding of the contract. *Id.* at 6. The Hearing Officer concludes that the government  
6 agency was not required to arrive at responsibility determination prior to bid opening but rather, has  
7 up to the awarding of the contract within which to determine whether KNG was a responsible bidder.  
8 *Id.* at 10. In this case, the bid was opened on August 19, 1999, and the bidder was determined as  
9 responsible approximately six (6) months later on February 10, 2000. This case is analogous with  
10 TFT and Docomo's situation. TFT has alleged that Docomo's bid is insufficient based on allegations  
11 dealing with equipment and GDOE, like in *Browning*, is still only at the intent to award stage.  
12 Docomo's bid did not materially differ from the IFB, and even had there been an actual discrepancy  
13 with any equipment, GDOE would have up to the awarding of the contract within which to determine  
14 whether Docomo was a responsible bidder. Therefore based on the ruling in *Browning*, Docomo is a  
15 responsive bidder.

16                   Similarly in, *King Cold Storage Warehouse, Inc. v. City of New Orleans and Philmat,*  
17 *Inc.*, Petitioner King Cold Storage (King) was the second lowest bidder for public contract for central  
18 warehousing and food commodities and filed an action to enjoin the execution of a contract to the  
19 lowest bidder Philmat, Inc. (Philmat). 522 So.2d 169 (1988). King argued lowest bidder Philmat was  
20 not the lowest responsible bidder because its bid failed to conform with the specifications as set forth  
21 in the bid proposal. *Id.* at 171. Specifically that Philmat's warehouse experience was insufficient,  
22 their vehicles and machinery were deficient, their warehouse facility was inadequate due to poor  
23 refrigeration and lacked adequate space to accommodate the food deliveries by large tractor trailers.  
24 *Id.* The Court stated that the law is well-settled that it is only where there is a "substantial variance  
25 between bid specification and a bid" that the bid must be rejected. *Id.* Also citing *Tide Equipment*  
26 *Company v. Pointe Coupee Parish Police Jury*, 312 So.2d 154 (La.App. 1st. Cir. 1975). The court  
27 ruled that the lowest bidder did not substantially vary from the bid specification and that the public

1 body with the authority to make this determination is given wide discretion and will not be interfered  
2 with by the court unless arbitrary or capricious. *Id.* at 172. Also citing *Bilongo v. Dept. of Health and*  
3 *Human Resources*, 428 So.2d 1021 (1983). There was no substantial variance between IFB 010-  
4 2016 and Docomo's bid, and for every bid spec that TFT disputed, Docomo copied nearly verbatim  
5 what GDOE had included in the IFB. GDOE's decision in this IFB was neither arbitrary nor  
6 capricious. Therefore based on *King*, even if TFT's argument about equipment inadequacies had any  
7 merit, Docomo is still the lowest responsive bidder.

8 In *Bean Dredging Corp. v. U.S.*, Plaintiff Bean Dredging Corp. (Bean) requested that  
9 lower bidder North American Trailing Company (NATCO) be declared non-responsive and that Bean  
10 be declared the lowest responsive bidder because the requirement of listing equipment on the schedule  
11 defines the minimum equipment that the contractor must obligate to the contract, Bean argued that  
12 this goes to responsiveness, not responsibility. 22 Cl. Ct. 519 (1991) at 521. Bean maintains that the  
13 solicitation required bidders to complete and submit with their bids a plant and equipment schedule.  
14 The solicitation schedule required the bidders to list the equipment they proposed to utilize on the  
15 project, including the number, type and capacity of dredges. *Id.* NATCO did not submit the schedule  
16 of plant and equipment with its bid or obligate any equipment to the performance of the contract. *Id.*  
17 at 521. NATCO submitted the low bid of \$1,549,250 and Bean was second at \$1,979,800.  
18 Subsequently, the solicitation issued by the US Army determined NATCO's bid was responsive.  
19 Bean argued that NATCO should not now be able to submit a schedule because doing so would  
20 amount to correcting a bid after opening. The Court in this matter stated a court should not substitute  
21 its judgment on such matters for that of the agency, but should intervene only when it is clearly  
22 determined that the agency's determinations were irrational or unreasonable. It is the burden of the  
23 aggrieved bidder to demonstrate that there was no rational basis for the agency's determination. *Id.* at  
24 522. In *Bean*, before the court was a more extreme example of TFT and Docomo's situation before  
25 the OPA. Bean attempted to impose their own value for the equipment listing for the IFB such as  
26 TFT is doing in this case for various equipment. TFT cannot provide any evidence that GDOE was  
27 irrational or unreasonable in its determination. TFT, like Bean, argues that the equipment listing of

1 the lowest bidder should render the lowest bidder nonresponsive, however the Court in *Bean*  
2 disagreed.

3 In *Bean*, the Court continued that a bidder may present evidence of responsibility after  
4 bid opening up until the time of award. *Id.* at 523. In terms of identifying whether a particular  
5 requirement is related to responsiveness or responsibility, the distinction “is whether the bidder will  
6 conform to the IFB, as opposed to how the bidder will accomplish conformance.” *Id.* The concept of  
7 responsibility specifically concerns the question of a bidder’s performance capability, as opposed to  
8 its promise to perform the contract, which is a matter of responsiveness. In this case, the court held  
9 that information about the equipment to be used on a project relates to the contractor’s capability to  
10 and ability to perform the work specified in the solicitation, and hence the request for this information  
11 is a matter of responsibility. *Id.* This Court followed decisions in *Heli-Jet Corporation v. United*  
12 *States*, 2 Cl.Ct. 613, 620 (1983). In which case, the low bidder failed to list accurate information on  
13 the aircraft it intended to use to perform a government contract to provide aerial insecticide spraying  
14 of national forests. The court found that the request for information on the equipment to be used  
15 related to the contractor’s capability or ability to perform, and thus to responsibility. The government  
16 can require additional equipment to enhance the ability and capability of the contractor to perform the  
17 work. A listing requirement is clearly a matter of responsibility. *Bean Dredging Corp. v. U.S.* 22  
18 Cl.Ct. 519 (1991) at 524.

19 TFT’s entire protest hinges on disputes based on equipment listing for this project and  
20 that Docomo’s bid is lacking. However, as found in *Bean* and *Heli-Jet*, information about the  
21 equipment to be used on a project relates to the contractor’s capability to and ability to perform the  
22 work specified in the solicitation, and hence the request for this information is a matter of  
23 responsibility and therefore even without an equipment listing a bidder may still be found responsive  
24 by an agency. Under *Bean* and *Heli-Jet*, a bidder may still be responsive without submitting any  
25 equipment listing or submitting erroneous equipment listing. Docomo’s case is distinguishable from  
26 *Bean* and *Heli-Jet* because Docomo submitted substantially similar specifications to that of IFB 010-  
27 2016.



1                   Based on the above, GDOE stands firm in its position that GDOE properly determined  
2 that Docomo was the lowest responsive and responsible bidder. However, should the OPA decide to  
3 entertain TFT's argument, GDOE maintains that TFT's claims regarding Docomo's supposed bid  
4 deficiencies are false and flawed because they are not related to the actual IFB specifications, not  
5 related to GDOE's intended use, and TFT's own responses are nearly identical to Docomo's  
6 supposedly deficient responses.

7                   **B.     TFT's Claims Regarding Docomo's Supposed Bid Deficiencies are False and**  
8                   **Flawed Because They Are Not Related to the Actual IFB Specifications, Not**  
9                   **Related to GDOE's Intended Use, and TFT's Own Responses Are Nearly**  
                    **Identical to Docomo's Supposedly Deficient Responses.**

10                   According to TFT, Docomo's bid was deficient in three (3) areas, and based on an  
11 email and a diagram TFT provides, the bid itself contained specifications that were not sound.  
12 However, the email and diagram TFT provided do not relate to the actual IFB specifications or  
13 GDOE's intended use. Further, even had TFT been correct that Docomo's submission was deficient,  
14 TFT must also then be considered deficient because at each point TFT identifies a problem with  
15 Docomo's bid, TFT submits a substantially identical response.

16                   1.     *IFB Section D.5.1.3 Power over Ethernet edge switches for WAP's*

17                   TFT argues that Docomo's bid did not meet the material or minimum  
18 requirements as stated in the GDOE IFB 010-2016. TFT argues that in reference to IFB section  
19 D.5.1.3, Power over Ethernet edge switches for WAP's, Docomo's bid is deficient because Docomo's  
20 proposed switch failed to comply with the amendment in Addendum 2 that required the switch to  
21 upgradeable 10 GbE. Procurement Appeal p.6 (Appeal). IFB section D.5.1.3 originally required  
22 ~~Brocade ICX6540-24P switch, 24 port, 1 GB, PoE +390W, 2x10SFP or approved equivalent or better~~  
23 with two SFP multi-mode fiber uplink. Ex. 7 GDOE p.56. Addendum 2 changed D.5.1.3 to read  
24 Brocade ICX6450-24P, 24-port 1 GbE switch PoE + 390W. 2x1 GbE SFP+ and 2x10 GbE SFP+  
25 uplink/stacking ports (1 GbE SFP+ upgradable to 10 GbE) or approved equivalent or better. Ex. 7  
26 GDOE p. 145.  
27  
28

1 TFT provided a substantially similar response to that of Docomo's response  
2 for D.5.1.3. TFT's bid response to D.5.1.3 stated Team TFT will comply with the requirements as  
3 specified. Ex. 11, GDOE p. 260. Docomo's bid copied IFB D.5.1.3 verbatim stating, "Brocade  
4 ICX6540-24P switch, 24 port, 1 GB, PoE +390W, 2x 1GSFP or approved equivalents or better with  
5 two SFP multi-mode fiber uplifters will be supplied by Docomo Pacific." Ex. 12, GDOE p. 502.  
6 TFT and Docomo provided the same response to item D.5.1.3. By TFT's own logic TFT did not  
7 comply with the amendment in Addendum 2 that corrected this issue. However, GDOE recognized  
8 GDOE's clerical area and was able to correct it in Addendum 2.

9 The purpose in Addendum 2 was for GDOE to make changes due to  
10 correction, additions, or deletions to the original IFB. See declaration of Carmen Taitano (Decl.  
11 Taitano). The purpose for amendments are to advise the prospective bidders of any changes made to  
12 IFB's. *Id.* Amendment 2 included answers to questions submitted by prospective bidders which  
13 caused changes to bid specifications. The purpose behind acknowledging the amendments is that it  
14 would indicate that prospective bidders received the amendment and intend to be bound by its terms.  
15 *Id.* The acknowledgment of amendments is a requirement as per 2 GAR section 3109(i)(1), (2) & (3)  
16 and also 3109 (m)(4)(B)(3)(i). GDOE concluded that based on Docomo's as well as TFT's  
17 acknowledgment of Amendment No. 2, the interested bidders intended to be bound by the new terms.  
18 *Id.* TFT and Docomo provided a subsequent acknowledgement of all addendums including  
19 Addendum 2. Ex. 11, GDOE p. 343 and Ex. 12, GDOE p. 526. Therefore as stated above, TFT  
20 submitted the same response as Docomo for D.5.1.3., and both bidders were considered compliant  
21 with the IFB based on their acknowledgement of amendments.

22 2. *IFB Section D.5.2.3.1 ClearPass licensing, as required*

23 TFT contends that Docomo's response to IFB section D.5.2.3.1 was not  
24 satisfactory because ClearPass licensing is not sold, or supported as an Access Point (AP). TFT bases  
25 this on emails between TFT and Adam Burton, Burton states the same "ClearPass licensing is not  
26 sold, or supported as an Access Point (AP) quantity deployment model." Appeal p. 7 references  
27 Exhibit D of Appeal.

1 First, TFT and Docomo again provided similar responses that mirror the  
2 requirements for IFB section D.5.2.3.1. TFT responded, Team TFT will provide all additional  
3 ClearPass licensing, as required. Ex. 11, GDOE p. 261. Docomo stated, ClearPass licensing will be  
4 provided accordingly for authorization and network access for the specified number of User End  
5 points. Ex. 12 GDOE p.502. So, if TFT believes that Docomo's response was inadequate by that  
6 same logic TFT's response would also be inadequate. Second, IFB section D.5.2.3 states ClearPass  
7 licensing, as required, provide additional licensing for authorization and Network Access for the  
8 specified number of **User End Points NOT as an Access Point (AP) quantity deployment model.**  
9 Ex. 7 GDOE p. 57. The letter TFT relies on does not address User End Points but instead addresses  
10 Access Point, an issue that is separate and not included in IFB 010-2016. *See Declaration of Vincent*  
11 *Dela Cruz (Decl. Dela Cruz).* Therefore based on section D.5.2.3.1., TFT submitted a similar  
12 response to Docomo's that copied the specs put forth in the IFB, and TFT's argument that ClearPass  
13 Licensing is not sold or supported applies to Access Points (AP) Quantity deployment method and  
14 NOT User End Points as IFB 010-2016 intends.

15 3. *IFB Section D.7 Furnish WLAN Equipment*

16 TFT argues Docomo's bid was deficient because Docomo failed to include the  
17 description and specification for any of the components in their proposed list and thus it is not  
18 possible to conduct an "objective" evaluation to determine if the proposed specifications meet  
19 GDOE's needs. TFT stated that Docomo's bid should have been found deficient and nonresponsive.  
20 Appeal p. 9.

21 The purpose of D.7.1 was to provide GDOE with information if the equipment  
22 being proposed by the Bidder is of the same make model or an equivalent to the WLAN equipment  
23 currently in GDOE WLAN infrastructure. Decl. Dela Cruz. Docomo's response to 7.2 was that  
24 Docomo Pacific will be providing preferred GDOE equipment to ensure there is no incompatibility  
25 with the GDOE wireless network environment. Ex. 12 GDOE p. 507. For Section D.7.3, Docomo  
26 will be providing the same equipment currently in place and will not be providing equivalent  
27 equipment. D.7.4, Docomo Pacific will be providing the same layer 2 edge switch as current

1 equipment in place. D.7.6, Docomo Pacific will be using the same make and model equipment of  
2 GDOE's preferred equipment. D.7.7, Docomo will not be providing equivalent equipment, rather, all  
3 equipment listed by GDOE will be provided to ensure there are no incompatibilities with GDOE's  
4 network. Ex. 12 GDOE p. 508. GDOE concluded that Docomo's response stated above was  
5 responsible. Decl. Taitano and Decl. Dela Cruz.

6 TFT additionally argues that Docomo's submission regarding a Fiber patch  
7 LC to SC; OM3 multi-mode, 50/125 laser optimized is deficient. Appeal p. 9 also referencing Exhibit  
8 F of Appeal. In regard to the LC to SC Fiber patch, TFT provided a diagram and stated, "what  
9 Docomo proposed will not work." *Id.* Although, TFT identifies this issue as an inadequate  
10 submission by Docomo, under D.7., the LC to SC specification actually refers to something proposed  
11 by GDOE and not Docomo. At IFB section D.5.1.6.4, this fiber patch specification would be used  
12 for the purposes provided for in IFB section D.6.1. Ex. 7 GDOE p. 56 and 62. Perhaps TFT did not  
13 notice, but TFT provided an identical response to that of Docomo's, in other words that TFT would  
14 also provide the LC to SC Fiber patch. TFT's bid responded to D.5.1.6 and D.5.1.6.1 stating, Team  
15 TFT will comply with the requirements as specified. Ex. 11 GDOE p. 261. Likewise, Docomo's bid  
16 stated all patch cables installed will meet prerequisites indicated above in reference to D.1.5.6.4, fiber  
17 patch cable (LC to SC;OM3) for each IDF switch uplink and MDF fiber switch. Ex. 12 GDOE p.  
18 502. In addition, the diagram provided by TFT in Exhibit F of their Appeal demonstrates and  
19 assumes a use for the D.5.1.6.4 that is not what GDOE intended nor planned on using as stated in  
20 section D.6.1. Therefore, the diagram from TFT's Appeal in Exhibit F does not apply to this IFB.  
21 Decl. Dela Cruz. In each school for GDOE, there is a spare pair of fibers terminated in a fiber  
22 enclosure with SC fiber optic adapter panel. The illustrations provided by TFT can not be used for  
23 the requirements of D.5.1.6.4 and D.6.1. TFT's assumptions of the configuration and use of the Fiber  
24 patch cable is incorrect and not GDOE's intended use. *Id.* Therefore, the equipment listing provided  
25 by Docomo was responsible, TFT's argument that the fiber patch submitted by Docomo would not  
26 work would also hurt TFT because TFT submitted the same response as Docomo to the fiber patch,  
27

28

1 and TFT's argument and diagram assume a configuration and use that is not accurate and not what  
2 GDOE would use it for.

3 TFT's argues that Docomo's bid was deficient and nonresponsive because  
4 Docomo's bid did not meet the material or minimum requirements as stated in the IFB. Appeal p.5-9.  
5 TFT also states that GDOE must accept Docomo's bid unconditionally as submitted. Appeal p. 10.  
6 TFT states, "The facts indicate that GDOE failed to property [sic] evaluate Docomo's bid and that  
7 GDOE glossed over Docomo's submission." Appeal p. 10. However, at every point of controversy  
8 TFT had for Docomo's bid, TFT submitted a nearly identical response to that of Docomo. Both TFT  
9 and Docomo repeated what the IFB stated in one form or another. In addition, matters pertaining to  
10 equipment and equipment listing would still go to bidder responsibility and not bidder responsiveness.  
11 As stated above, Docomo's bid total was **\$430,688.26** and TFT's was **\$503,577.00**, a difference of  
12 **\$72,988.74**. Therefore based on both parties' bids and price, GDOE determined that Docomo was the  
13 lowest responsible and responsive bidder.

14 In conclusion, Docomo's bid was the lowest responsive and responsible bid  
15 and Docomo was correctly recommended for award. There is no merit in TFT's appeal, and  
16 therefore, GDOE asks the OPA to dismiss TFT's Appeal in its entirety.

17 Dated this 24<sup>th</sup> day of May, 2016.

18 Respectfully submitted,

19 **GUAM DEPARTMENT OF EDUCATION**

20 By:   
21 **JAMES L.G. STAKE**  
22 *Legal Counsel*

# **Exhibit 24**

1 **GUAM DEPARTMENT OF EDUCATION**

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5  
6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

7  
8 IN THE APPEAL OF

APPEAL NO.: OPA-PA-16-004

9  
10 TECHNOLOGIES FOR TOMORROW, INC.

**DECLARATION REGARDING  
COURT ACTION**

11 Appellant.

12  
13 The undersigned party does hereby confirm that to the best of his knowledge, no case or  
14 other action concerning the subject of this Appeal has been commenced in any court of Guam.  
15 All parties are required to and the undersigned party agrees to notify the Office of the Public  
16 Auditor within twenty-four (24) hours of being informed of the commencement of a court action  
17 regarding this Appeal or the underlying procurement action.

18 Dated this 24<sup>th</sup> day of May, 2016.

19 Respectfully submitted,

20 **GUAM DEPARTMENT OF EDUCATION**

21  
22 By:   
23 **JAMES L.G. STAKE, ESQ.**  
*Legal Counsel*