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GUAM DEPARTMENT OF EDUCATION

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**OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS**

In the Appeal of

Pacific Data Systems, Inc. (PDS),

Appellant.

APPEAL CASE NOS.: OPA-PA-21-004 and
OPA-PA-21-005

**GDOE'S OPPOSITION TO APPELLANT'S
MOTION TO ENFORCE
CONFIDENTIALITY OF APPELLANT'S
SUBMISSION AND MOTION TO RELEASE
TELEGUAM HOLDINGS LLC'S (GTA) BID
DOCUMENTS**

The Guam Department of Education (GDOE), by and through its undersigned counsel, files this Opposition to Appellant's Motion to Enforce Confidentiality of Appellant's Submissions, and Motion to Release GTA's Bid Documents, for Appeal of Case Nos. OPA-PA-21-004 and OPA-PA-21-005. Appellant's motions are without merit and should be denied.

I. RELEVANT BACKGROUND

On April 28, 2021, GDOE issued its Invitation for Bids (IFB) 027-2021 and 028-2021 for Telecommunication Services (hereafter IFB 027-2021 and IFB 028-2021 shall be referred to as "IFB 027" and "IFB 028"). On June 9 and June 10, 2021, Appellant filed their respective protests for the two (2) IFBs. On June 29, 2021, GDOE issued its denial of Appellant's protests. On July 15, 2021, GDOE received the notice of appeals from the Office Public Accountability

1 (OPA). On July 23, 2021, GDOE filed the Procurement Records for the consolidated appeals.
2 The following is GDOE's Opposition to Appellant's (1) Motion to Enforce Confidentiality of
3 Appellant's Submissions, and (2) Motion to Release GTA's Bid Documents.

4 **II. GDOE PROVIDED THE PROCUREMENT RECORD IN ACCORDANCE**
5 **WITH THE GUAM PROCUREMENT LAW.**

6 Guam Procurement rules and regulations state the head of a Purchasing Agency shall
7 submit to the OPA **a complete copy of the procurement record relevant to the appeal** within
8 five (5) working days of receiving notice of an Appeal, in chronological order where practicable,
9 numbered sequentially, tabbed, and indexed to identify the contents. *See* 2 GAR. Div. 4
10 §§12104(c)(3), 12105. If the Appellant or Agency considers that the Appeal, the Procurement
11 File, the Agency Report, or any other report or material submitted contains material which shall
12 be withheld pursuant to law or regulation, a statement advising of this fact must be affixed to the
13 front page of the document and the allegedly exempted information must be so identified
14 wherever it appears. *See* 2 GAR Div. 4 §12104(c)(6). Regarding confidential data and IFBs, the
15 Procurement Officer shall examine the bids to determine the validity of any requests for
16 nondisclosure of trade secrets and other proprietary data identified in writing, and the bids shall
17 be opened to public inspections subject to any continuing prohibition on the confidential data.
18 *See* 2 GAR Div. 4 §3109(l)(3). On July 23, 2021, as required by Guam Procurement rules and
19 regulations, GDOE provided **the record relevant to the appeals** that included the contested bids
20 of GTA and PDS to the tribunal OPA. *See* 2 GAR Div. 4 §12104(c)(3). Pursuant to the rules and
21 regulations, GDOE also submitted a statement advising of the fact that material provided to the
22 tribunal OPA contained confidential information and identified where the documents appeared.
23 *See* 2 Div. 4 §12104(c)(6). Therefore, GDOE properly provided the Procurement Records
24 relevant to the consolidated Appeals to the OPA, and properly identified and informed the OPA
25 of the confidential materials contained therein. *See* 2 GAR Div. 4 §§12104(c)(3) & (6).
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1 Appellant's argument that GDOE supposedly ignored the confidentiality designations of its own
2 bid¹ is simply not true and without merit, because GDOE provided the necessary designations
3 and relevant record of the appeal to the tribunal OPA, in accordance with the Guam Procurement
4 law. *Id.* Appellant fails to provide legal authority to support their argument. Because GDOE
5 properly provided the record in accordance with the Guam Procurement law, Appellant's Motion
6 should be denied.

7 **III. THE GUAM PROCUREMENT LAW EXPRESSLY PROHIBITS**
8 **DISCLOSURE OF GTA'S BID TO APPELLANT.**

9 As stated above, the Procurement Officer shall examine the bids to determine the validity
10 of requests for nondisclosure of trade secrets and other proprietary data identified in writing, and
11 the bids shall be opened to public inspections subject to any continuing prohibition on the
12 confidential data. *See* 2 GAR Div. 4 §3109(1)(3). In an appeal, if the Purchasing Agency
13 determines that the procurement file material submitted contains protected information, a
14 statement advising of this fact must be affixed to the front page of the document and the allegedly
15 exempted information must be so identified wherever it appears. *See* 2 GAR Div. 4
16 §12104(c)(6). Pursuant to the Guam Procurement law, GTA submitted their request for
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19 ¹ As previously argued in GDOE's Rebuttal to Comments, the procurement records were filed to the
20 OPA as the tribunal hearing the protests, as well as opposing counsel and source of the bid, PDS. *See*
21 GDOE's Rebuttal to Comments at 5. The OPA also did not post the entire procurement record on their
22 Web-site, only the table of contents. Relevant procurement case law addresses inadvertent disclosures
23 only where the protester demonstrates that the recipient of the information received an unfair advantage, or
24 that the protester was otherwise competitively prejudiced by the disclosure. *See In the Matter of*
25 *Inmarasat Government, Inc.*, B- 419583 (2021) WL 2476481 at 7; *see also In Matter of: S & K Aerospace,*
26 *LLC.*, B- 411648 (2015) WL 7348967 at 6 (The Comptroller General decided it will sustain a protest based
27 on improper disclosure only where the protester demonstrates that it was in some way competitively
28 prejudiced by the disclosure). This case is distinguishable, in that the evaluation and award for IFB 027
and IFB 028 occurred more than one (1) month before the submission of the procurement records for the
consolidated appeals. To be clear, the submission of the procurement records as required by the
consolidated appeals, did not affect the evaluation and award process. There is no evidence of unfair
competitive advantage or prejudice because the procurement records were only provided to the OPA and
PDS.

1 proprietary data designation. See GDOE Procurement Record of IFB 027 at 333 and IFB 028 at
2 373. GDOE reviewed GTA's request and agreed to protect the confidentiality of GTA's bids.
3 See IFB 027 at 334, and IFB 028 at 374. GDOE provided the required notice to the OPA
4 regarding confidentiality of GTA's information. See IFB 027 at 332, and IFB 028 at 372.
5 Therefore, because GTA requested for certain proprietary information protection, GDOE properly
6 reviewed and agreed to preserve said confidentiality, and the required confidential notice was
7 provided to the OPA, the information sought by Appellant is clearly protected by Guam
8 Procurement law and should not be accessible to the Appellant. See 2 GAR Div. 4
9 §§12104(c)(6), 3109(1)(3). Appellant's argument is without legal authority. Because GDOE
10 properly followed the Guam Procurement law and Appellant has no legal authority to access the
11 information sought, Appellant's motion should be denied.

12 For the reasons mentioned above, GDOE respectfully requests that the OPA deny
13 Appellant's Motions.

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16 Respectfully submitted this 8th day of September, 2021.

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18 **GUAM DEPARTMENT OF EDUCATION**

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20 By:


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