

DATE: 12/24/2014

TIME: 2:14  AM  PM BY: H.B.

**STATEMENT ANSWERING ALLEGATIONS OF APPEAL** 14-013

(As required by 2 G.A.R. §12105(g))

**I. RELEVANT BACKGROUND**

**A. GPA SOLICITS BIDS FOR MULTI-STEP BID GPA-072-14, VOICE AND DATA SERVICES**

On September 18, 2014, Guam Power Authority (“GPA”) issued Invitation for Multi-Step Bid, GPA-072-14, Voice and Data Services. Procurement Record, Tab “3”. The IFB was a two-step bid process consisting of the technical bid and submission of a sealed price proposal. Three companies submitted bids in response to the IFB, Pacific Data Systems, Inc. (PDS), GTA Teleguam Holdings, LLC (GTA), and Docomo Pacific, Inc. (Docomo), and all three companies were qualified in the phase I technical bid review process. Prior to submission of technical bids and sealed price proposals, the three bidders had an opportunity to submit questions regarding the IFB. GPA issued amendments I to IV in response to these questions, and other amendments to clarify the IFB. Procurement Record, Tab “7-10”.

Amendment IV, dated October 16, 2014, clarified certain questions raised by PDS, with PDS asking specific questions regarding the site surveys and the PDS proposal as to how services should be grouped. (Tab “10”). Other amendments notified prospective bidders of the changes to Bid Milestone dates.

The technical review committee qualified all three bidders, GTA, PDS and Docomo, as technically qualified under the multi-step process. On November 6, 2014, the sealed bid proposals of the three qualified bidders were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of Bids which lists the line item bids for

A1-A13, with A7-13 bundled together. The bid abstract, containing the GTA, PDS and Docomo Price Proposals, are contained in the procurement record at Tab "27." Each of the three bidders submitted detailed price proposals in accordance with the bid documents.

On October 29, 2014, the evaluation committee met and requested clarification from both PDS and GTA regarding their technical proposals. (Tab 22). On October 30, 2014, GPA received response letters from PDS and GTA regarding their technical proposals. (Tab 23). On November 6, 2014, the evaluation committee sent clarification letters again to PDS and GTA regarding their price proposals. (Tab 31). On November 7, 2014, GPA received response letters from PDS and GTA regarding their price proposals. (Tab 32). GPA had specified in its bid that prices be listed per site. Based on the PDS and GTA responses, the evaluation committee had to make calculations such that all three bidders were compared equally, and the committee prepared an analysis based on those clarifications. (Tab 34). On November 14, 2014, GPA provided the bidders with a Notice of Intent of Possible Award for items A1-A6 to Docomo, and A7-A13 to PDS. On or about November 17, 2014, PDS sent a protest letter to GPA. GPA denied the protest on November 21, 2014. Procurement Record, Tab "38". IP&E filed a protest with the Office of Public Auditor on December 9, 2014. Tab "45".

## II. DISCUSSION

### A. THE DOCOMO BID WAS RESPONSIVE, AND THE AWARD FOR VOICE AND DATA WAS PROPERLY AWARDED TO DOCOMO FOR LINE ITEMS A1-A6.

Procurement law requires that GPA award to the lowest responsible and **responsive** bidders. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bid. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2). Further, any bidder's offering which does not meet the acceptability requirements shall be rejected

as non-responsive. 2 GAR, Div. 4, Chap. 3, §3109(n)(3)( c).

PDS contends that GPA improperly awarded items A3-A5 to Docomo, as it believes that Docomo does not have the regulatory authority to provide these services. Docomo submitted a certificate of authority from the PUC regarding the regulatory approval. The second area of protest from PDS was regarding the additional bid security for PDS, for which GPA allowed PDS to use the bid bond submitted as a performance bond. PDS submits that it has the necessary expertise to determine whether another bidder has met the requirements under the law to offer regulated services.

GPA is not charged with investigating potential violations of regulatory provisions, as that job is left to the Guam Public Utilities Commission (GPUC). GPA does not have the necessary expertise found in the GPUC to determine what entities have the ability to provide regulatory services regulated by the GPUC. Docomo provided a Certificate of Authority from a related corporate entity issued by GPUC to GPA showing that entity has the appropriate authority to provide the services sought by GPA in the IFB. If PDS is certain that Docomo is violating any regulatory provisions, it can certainly file a complaint with the GPUC and litigate that matter. It appears that PDS is very familiar with the process for litigating regulatory provisions at the GPUC, as it has filed numerous cases over the past several years with the GPUC.

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

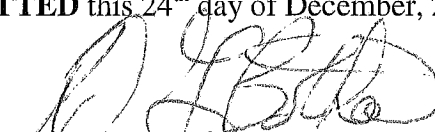
the evaluation criteria specified in the IFB.

GPA properly made an award to Docomo for line items A1-A6, as it deemed Docomo the lowest, **responsive** and responsible bidder for each line items in A1-A6 as specified in the IFB.

CONCLUSION

GPA requests that the appeal of PDS be dismissed, and that the Public Auditor award all legal and equitable remedies that GPA may be entitled to as a result.

**RESPECTFULLY SUBMITTED** this 24<sup>th</sup> day of December, 2014, by:

A handwritten signature in black ink, appearing to read 'D. Botha', is written over the printed name below.

D. GRAHAM BOTHA, ESQ.  
GPA Legal Counsel