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**OPA-PA-21-001: PDS Comments on Procurement Record, Agency Report**

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**Franklin Artero** <franklin@pdsguam.com>

Mon, Jun 14, 2021 at 4:04 PM

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Hafa Adai Mr. Hernandez,

Attached are the comments of Pacific Data Systems with regards to the submission of the Procurement Record and Agency Report by Guam Housing and Urban Renewal (GHURA) relative to this appeal.

Senseramente,

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**OPA-PA-21-001 PDS Comments on Procurement Record, Agency Report.pdf**

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

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IN THE PETITION OF	)	DOCKET NO: OPA-PA-21-001
PACIFIC DATA SYSTEMS,	)	<b>PROCUREMENT APPEAL PETITION</b>
Appellant.	)	COMMENTS ON PROCUREMENT RECORD, AGENCY REPORT

12 **INTRODUCTION**

13 **Comes Now** Pacific Data Systems (PDS), through its President and Chief Operating  
14 Officer (COO), and hereby submits its comments as the Appellant in the above referenced  
15 Appeal on the Agency Report submitted by the Guam Housing and Urban Renewal  
16 Authority (GHURA) in this matter.  
17

18 **BACKGROUND**

19 On January 5, 2021, GHURA advertised an Invitation for Bid GHURA-COCC-021-003  
20 MetroLan (the "Bid") for MetroLan Services, Internet Services and Voice Services. The  
21 contract terms were for three (3) years, with the government's option of two separate  
22 renewals of one year each. The actual bid packet was not made available to PDS until  
23 January 7, 2021. GHURA proceeded with the procurement and made an award to the  
24 lowest priced bidder, IT&E, despite PDS providing evidence of deficiencies and non-  
25 compliance with IT&E's bid submission.

1  
2 PDS protested this award on March 26, 2021 after it was notified on March 12 of the  
3 award to IT&E. GHURA denied PDS' protest on May 5, 2021, citing IT&E's bid  
4 deficiencies and non-compliance as insignificant and minor; PDS's protest was untimely  
5 and that PDS's bid was unreasonably high and the award of such bid would not be in the  
6 best interest of GHURA and the people of Guam.

### 7 8 **COMMENTS ON PROCUREMENT RECORD**

9 PDS has reviewed the Procurement Record and cites the following deficiencies:

- 10 1. Page 5, Item #4: Missing the recording of the Zoom meeting between GHURA and  
11 whomever they met with on "clarification on bid design, *missing* docs" (emphasis  
12 added).
- 13 2. Page 5, Item #5: Missing the recording of the "Discussion with IT&E, GHURA,  
14 Attorney Perez".
- 15 3. Page 5, Item #6: Missing the recording of the Negotiation meeting between  
16 GHURA and PDS.
- 17 4. Page 8, Item #48: Missing the recording of the bid opening.
- 18 5. Page 9, Item # 58: Missing the recording of the Zoom meeting on "Clarification on  
19 topology and missing information on required documents".
- 20 6. Page 9, Item #61: Missing the recording of the "BOC Approval of award to IT&E".
- 21 7. Page 9, Item #71: Missing the recording of the "Clarification on Bid Sow Mtg.  
22 w/IT&E, Attorney Perez & GHURA".
- 23 8. Page 9, Item #6: Missing the recording of the "Meeting w/PDS & GHURA &  
24 Attorney Perez".

1 9. Page 12: Clicking on the website link goes to page not found. This is the URL that  
2 has the Pre-bid conference zoom recording: [Metrolan Pre Bid Meeting 01 13 21 -](#)  
3 [YouTube](#). This is the only recording PDS found pertaining to this bid on GHURA's  
4 website.

5 10. Page 18: Procurement Record does not have the drafts of the bid specifications or  
6 any of the emails, communications, etc. for this bid.

### 8 COMMENTS OF AGENCY RECORD

9 PDS has reviewed GHURA's Agency record and cites the following:

10 1. Page 6: GHURA indicated the protest letter is dated May 26, 2021. PDS's protest  
11 letter is dated **March 26, 2021**.

12 2. Page 205, 206: IT&E submitted the corrections on the defective Certifications and  
13 Representations of Offerors with the same date and the checkmarks that were  
14 missing in the original submission.

15 3. Page 214: IT&E submitted the correction of the Disclosure of Organizational  
16 Conflict of Interest Affidavit with the year filled in on the original submission of the  
17 affidavit.

18 4. Page 514: 2/24/2021 Memo to File indicates that there was:

19 a. communication from their attorney (#3). However, the Procurement  
20 Record does not contain any communication log of this.

21 b. Items 4,5 and 6 indicates some sort of communication between the  
22 buyer and MIS regarding PDS' contention that IT&E's proposal should  
23 be rejected. It is not clear to PDS if this is reflected in the Procurement  
24 Record.  
25

1 5. Page 517: March 4 Memo to File indicates a ZOOM meeting was held between  
2 GHURA's Procurement, MIS and IT&E on February 18, 2021. However, there is  
3 no entry of this meeting in the communication log of the Procurement Record.

4 6. Page 517: March 4 Memo to File cites 2 GAR §3109(m)(4)(b) as the section which  
5 allows GHURA to waive minor informalities. This section is the following:

6 (B) **Minor Informalities.** Minor informalities are matters of form, rather than  
7 substance evident from the bid document, or insignificant mistakes that can be  
8 waived or corrected without prejudice to other bidders; that is, the effect on price,  
9 quantity, quality, delivery, or contractual conditions is negligible. The Procurement  
10 Officer shall waive such informalities or allow the bidder to correct them depending  
11 on which is in the best interest of the territory. Examples include the failure of a  
12 bidder to: (1) return the number of signed bids required by the Invitation for Bids;  
13 (2) sign the bid, but only if the unsigned bid is accompanied by other material  
14 indicating the bidder's intent to be bound; or (3) acknowledge receipt of an  
15 amendment to the Invitation for Bids; but only if: (i) it is clear from the bid that the  
16 bidder received the amendment and intended to be bound by its terms; or (ii) the  
17 amendment involved had a negligible effect on price, quantity, quality, or delivery.  
18

19 *PDS contends actions taken by GHURA under this regulation section are prejudicial to*  
20 *PDS. IT&E was allowed to correct significant mistakes in its bid submission which*  
21 *otherwise would have been deemed non-responsive. Because IT&E's bid price was*  
22 *immediately available to GHURA during the bid opening, GHURA's decisions were based*  
23 *on cost versus the integrity of the Guam Procurement Law.*  
24  
25

**CONCLUSION**

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2 GHURA's has failed to provide the FULL Procurement Record that provides ALL  
3 documents and recordings. There is no documentation provided that shows the NEW  
4 CORRECTED documents submitted by IT&E and the date of these submissions. All PDS  
5 has received are the originally submitted documents that seem to have been modified  
6 with the missing information PDS pointed out EXCEPT for the date of submission and  
7 updated notarization. PDS deems this to be inappropriate in the least and most likely  
8 illegal.

9 GHURA's actions to allow IT&E to correct significant deficiencies in its bid submission is  
10 prejudicial to PDS. PDS's full compliance with the requirements of the bid solicitation were  
11 discarded in favor of IT&E's non-compliant bid and lower bid price.  
12

13  
14 GHURA's PROCUREMENT and AGENCY Records contains inaccuracies and missing  
15 documentation that reflect an incomplete Procurement Record. Previous decisions of the  
16 Office of Public Accountability on incomplete procurement records have caused bids to  
17 be cancelled and instructions to the requesting agency to start the solicitation process all  
18 over again.

19 **RESPECTFULLY SUBMITTED** this 14th day of June 2021.

20 **PACIFIC DATA SYSTEMS**

21   
22 \_\_\_\_\_  
23 **JOHN DAY**  
24 *President/COO*