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E-FILING: In the Appeal of Pacific Data Systems, Inc.; OPA-PA-21-001;

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Good Afternoon Jerrick,

Attached is *GHURA's Rebuttal to Appellant's Comments on Procurement Record, Agency Report* for E-filing. We will be serving physical copies to your office shortly.

Please let us know if you need anything further from our office to complete this filing.

Respectfully,

Tawnia N. Katsuren, *Secretary*

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**062221 Rebuttal to Appellant's Comments on Procurement Record, Agency Report (ACP Final).pdf**

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8 Urban Renewal Authority*

9 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
10 HAGATNA, GUAM**

11 In the Appeal of

12 PACIFIC DATA SYSTEMS,

13 Appellant.

14 APPEAL NO: OPA-PA-21-001

15 **REBUTTAL TO APPELLANT'S
16 COMMENTS ON PROCUREMENT
17 RECORD, AGENCY REPORT**

18 **INTRODUCTION**

19 The Guam Housing and Urban Renewal Authority (“GHURA”) through counsel, Anthony
20 C. Perez, Esq., hereby submits its Rebuttal to Appellant’s Comments on Procurement Record,
21 Agency Report lodged by Pacific Data Systems (“PDS”) pursuant to 2 GAR Div. 4, § 12104
22 (c)(4)¹.

23 **REBUTTAL**

24 **1. Procurement Record**

25 PDS’ Comments on Procurement Record are misplaced as 2 GAR Div. 4, § 12104 (c)(4)
26 only permits an Appellant to comment on the Agency Report. Here, PDS is seeking to broaden
27 the scope of its comments to include comments as to the procurement record which is not allowable
28 pursuant to Guam law. Even if PDS’ Comments on Procurement Record were proper, which they

¹ The Rebuttal was due on June 21, 2021. However, GHURA requests leave to file on June 22, 2021 due to undersigned counsel being off work on June 21, 2021 due to illness.

1 are not, PDS has not made any showing that GHURA has not complied with its requirements under
2 5 GCA § 5249 which provides the following information must be included in the Record of
3 Procurement Actions:

4
5 a. the date, time, subject matter, and names of participants at any meeting including
6 government employees that is in any way related to a particular procurement;

7 b. a log of all communications between government employees and any member of the
8 public, potential bidder, vendor or manufacturer which is in any way related to the procurement;

9
10 c. sound recordings of all pre-bid conferences; negotiations arising from a request for
11 proposals and discussions with vendors concerning small purchase procurement;

12 d. brochures and submittals of potential vendors, manufacturers or contractors, and all
13 drafts, signed and dated by draftsman, and other papers or materials used in the development of
14 specifications; and

15
16 e. the requesting agency's determination of need.

17
18 *See 5 GCA § 5249*

19 PDS' Comments on Procurement Record do not accurately exhibit any deficiencies, as the
20 purported deficiencies it has identified are not required for a Record of Procurement Actions.

21 PDS seeks sound recordings of meetings identified in Comments 1 through 8. Guam law
22 only requires the date, time, subject matter and names of participants at a meeting. *See 5 GCA §*
23 *5249 (a)*. Also, the only sound recordings required for a Record of Procurement Actions relate to
24 pre-bid conferences, negotiations arising from a request for proposals or concerning small
25 purchase procurements. The meetings identified in Comments 1 through 8 do not constitute a pre-
26
27
28

1 bid conference, negotiations arising from a request for proposal as this procurement was an IFB,
2 or discussions concerning small purchase procurements. 5 GCA § 5249 (c).

3
4 As to Comment 9, GHURA acknowledges and agrees that a sound recording of the pre-bid
5 conference is part of the Record of Procurement Actions. GHURA has identified that the sound
6 recording of the pre-bid conference is on GHURA’s website.

7
8 As to Comment 10, GHURA has identified in the submitted Record of Procurement Action
9 that no responsive documents exist as to 5 GCA § 5249 (d).

10 **2. Agency Report**

11 PDS’ Comments on Agency Report do not exhibit any issues or deficiencies with the
12 procurement process undertaken by GHURA for this Invitation for Bid. Instead, PDS’ Comments
13 pertain to issues related to the Procurement Record, resubmissions of IT&E provided in the
14 Agency Report (Tab E, Exhibit 5), and generalized comments regarding the existence of minor
15 informalities and insignificant mistakes within the IT&E bid. In addition, PDS has failed to
16 provide comments regarding a number of matters within the Agency Report including the
17 resubmission of the bid bond, the purported unresponsiveness of the IT&E bid because it
18 purportedly exhibits a point-to-multi-point design, the untimeliness of the Protest, PDS’ lack of
19 standing, and PDS’ bid being unreasonably high and not subject to an award.
20
21

22 Comment 1. GHURA knows the date of the filing of the PDS’ Protest was March 26,
23 2021. *See* Agency Report, Tab G, p. 3, ln. 14.

24 Comment 2. GHURA permitted IT&E to correct insignificant mistakes on the
25 Certifications and Representations of Offerors (“HUD form”). IT&E corrected such insignificant
26 mistakes by resubmitting said document with the relevant boxes checked off. *See* Agency Report,
27 Tab E, Exhibit 5. Furthermore, IT&E submitted an Affidavit re: Contingent Fees (AG
28

1 Procurement Form 007) in its Bid. Thus, the failure to check off the boxes within the HUD form
2 as to contingent fees is a minor informality as IT&E had submitted an Affidavit re: Contingent
3 Fees with its Bid.
4

5 Comment 3. GHURA permitted IT&E to correct insignificant mistakes on its Disclosure
6 of Organizational Conflict of Interest Affidavit, by correcting the date from “202” to “2021”. *See*
7 Agency Report, Tab E, Exhibit 5.
8

9 Comments 4, 5. PDS complains that the Memo to File does not accurately correlate with
10 the communication logs provided in the Record of Procurement Action. This argument is
11 misplaced as PDS is only permitted to provide comments as to the Agency Report, not procurement
12 record, in its filing. *See* 2 GAR Div. 4, § 12104 (c)(4).
13

14 Comment 6. PDS alleges that it was prejudiced because IT&E was allowed to correct
15 “significant mistakes” within its Bid. PDS does not engage in any legal analysis or reasoning to
16 exhibit how the IT&E bid contained “significant mistakes”. GHURA, in its Agency Answer,
17 made a finding that the mistakes made were insignificant and allowing the correction of such
18 insignificant mistakes were in the best interests of the territory of Guam. GHURA wrote at length
19 about the authority of GHURA to waive minor informalities and allow the correction of
20 insignificant mistakes pursuant to 2 GAR § 3109(m)(4)(b), yet PDS in its comments only
21 concludes that the purported mistakes were “significant” without any other discussion or analysis.
22

23 CONCLUSION

24 GHURA has fully complied with Guam law concerning this procurement. PDS’ arguments
25 concerning the contents of the Record of Procurement Actions are misplaced. GHURA has
26 complied with the Record of Procurement Actions in accordance with 5 GCA § 5249. If there are
27 missing items in the Record of Procurement Actions, then those matters may be addressed with
28

1 the Public Auditor, and if required, additional information may be provided by GHURA should it
2 exist. However, PDS' arguments regarding the deficiency of the Record of Procurement Actions
3 are misplaced as the Comments to Agency Report are limited to the Agency Report itself. See 2
4 GAR Div. 4, § 12104 (c)(4).

5
6 PDS has further failed to exhibit, in its Comments on Agency Report, that the IT&E Bid
7 contained "significant" mistakes whereas GHURA has made a clear and supported finding that the
8 mistakes made in the IT&E Bid were "insignificant". PDS relies upon generalizations and legal
9 conclusions about the significance of the IT&E mistakes without exhibiting or analyzing how said
10 mistakes were "significant".

11
12 Finally, PDS has failed to address a number of the arguments made in the Agency Report
13 including arguments related to the untimeliness of the PDS' Protest, lack of standing, the
14 responsiveness of the IT&E Bid, and the unreasonably high amount of the PDS bid. GHURA
15 submits that the failure by PDS to address said arguments constitute a waiver of its defenses as to
16 those arguments.

17
18 GHURA respectfully requests that this Appeal be denied and/or dismissed.

19 Submitted this 22nd day of June, 2021.

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22 **LAW OFFICE OF ANTHONY C. PEREZ**

23
24 By: _____
25 **ANTHONY C. PEREZ, ESQ.**
26 *Attorney for Guam Housing and Urban*
27 *Renewal Authority*