

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO OPA-PA: 14-003

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**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
GOVERNMENT OF GUAM**

IN THE APPEAL OF :

CASE NO: OPA-PA 14-003

PACIFIC DATA SYSTEMS, INC.

**MOTION TO DISMISS**

Appellant.

**COMES NOW** Guam Visitors Bureau (“GVB”), by and through undersigned counsel of record, and submits its Motion to Dismiss Appellant Pacific Data System, Inc.’s procurement appeal. The underlying protest was not timely filed and this appeal should therefore be dismissed as is further analyzed below.

**I.**

**FACTUAL & PROCEDURAL BACKGROUND**

On January 31, 2014, the GVB issued an invitation for interested parties to submit bids for the assessment of existing CCTV surveillance systems and design-build-upgrade of new additional CCTV infrastructure in the Tumon area, including maintenance services and 24/7 system monitoring (Multi-Step Bid No. GVB-2014-002MS). *See Agency Procurement Record at Tab E.* Two offerors, Pacific Data Systems, Inc. (“PDS”) and G4S Security Systems, Inc. (“G4S”) submitted bids that were opened on February 17, 2014. The sealed bid costs were opened publicly on February 26, 2014. *See Agency Procurement Record at Tab A.*

On February 27, 2014, the GVB sent a Notice of Award to G4S as the lowest responsive and responsible offeror. On the same date, a Notice of Non-Selection was sent to PDS along with the bid

1 abstract for review. *See attached Exhibit A; Agency Procurement Record at Tab B.*

2 On March 4, 2014, PDS made a written request under the Freedom of Information Act  
3 (“FOIA”). *See attached Exhibit B; Agency Procurement Record at Tab B.* On March 6, 2014, the  
4 GVB sent a letter to PDS documenting their meeting of March 5, 2014, wherein the parties discussed  
5 PDS’ concerns regarding the disparity of prices of items offered to the GVB. *See attached Exhibit C;*  
6 *Agency Report at Tab H; Agency Procurement Record at Tab B.* The GVB responded to the FOIA  
7 request in accordance with law on March 10, 2014. *See attached Exhibit D; Agency Procurement*  
8 *Record at Tab B.* On the following date, PDS repeated their FOIA request for a copy of the technical  
9 bid package submitted by G4S. *See attached Exhibit E; Agency Procurement Record at Tab B.* The  
10 GVB responded on March 13, 2014, explaining that pursuant to 2 GAR § 3109(v)(2)(c), the technical  
11 offer of a successful bidder may only be disclosed after an award. *See attached Exhibit F; Agency*  
12 *Procurement Record at Tab B.*

13  
14 On March 24, 2014, PDS submitted a bid protest alleging that (1) GVB did not undertake a  
15 proper evaluation of the PDS and G4S bids considering the disparity of prices of items offered, and (2)  
16 GVB failed to provide PDS with copies of G4S bid documents. *See Agency Report at Tab A; Agency*  
17 *Procurement Record at Tab B.* The protest was rejected on April 1, 2014, as without merit and out of  
18 time. *See Agency Report at Tab H; Agency Procurement Record at Tab B.*

## 19 II.

### 20 ARGUMENT IN SUPPORT OF MOTION TO DISMISS

21 Title 5 GCA § 5425(a) Right to Protest states in part, “[a]ny actual or prospective bidder,  
22 offeror, or contractor who may be aggrieved in connection with the method of source selection,  
23 solicitation or award of a contract, may protest to the Chief Procurement Officer, the Director of  
24 Public Works or the head of a purchasing agency. The protest shall be submitted in writing within  
25 fourteen (14) days after such aggrieved person *knows or should know* of the facts giving rise  
26 thereto.” 5 GCA § 5425(a) (Emphasis added.) *See also* 26 GAR §§ 16901(c)(1); *Guam Imaging*  
27 *Consultants, Inc. v. GMHA*, 2004 Guam 15. Pursuant to 26 GAR §§ 16901(c)(1), protests filed after  
28

1 the fourteen (14) day period after the protestor knows of should have known of the facts giving rise  
2 to the protest shall not be considered.

3 **A. PDS KNEW OF THE FACTS GIVING RISE TO ITS PROTEST ON FEBRUARY 27, 2014.**

4 On February 27, 2014, PDS received a Notice of Non-Selection which states in relevant part,  
5 “GVB has elected to pursue a contract with another offeror. The [Bid] Abstract is attached for your  
6 review.” See attached *Exhibit A; Agency Procurement Record at Tab B.* (Copies of the bid abstracts  
7 are located in the Agency Procurement Record at Tab F.)

8 The facts alleged to support PDS’ protest are based on information provided in the bid abstracts.  
9 For example,

10 “A. The G4S bid included a CCTV Camera that was 80% less than the camera recommended by  
11 PDS...

12 “B. The amount bid by G4S for Task IV...shows that G4S will charge GVB less...

13 “C. The cost quoted by G4S to connect and install...as listed on Bid Form B-14.2...

14 “D. The cost quoted by G4S to connect and install...as listed on Bid Form B-14.2...”

15 See PDS protest, Agency Report at Tab A; Agency Procurement Record at Tab B (Emphasis added).

16 Clearly, PDS was aware of the facts giving rise to its protest on February 27, 2014, when it  
17 received Notice of Non-Selection and the Bid Abstract. Therefore, any written protest should have  
18 been submitted to the GVB within 14 days, or by March 13, 2014. However, PDS did not submit its  
19 bid protest until March 24, 2014 – approximately 25 days after it knew of the facts giving rise to its  
20 protest. The protest is therefore untimely and should be dismissed.

21 **B. PDS KNEW OF THE FACTS GIVING RISE TO ITS PROTEST ON MARCH 5, 2014.**

22 Should PDS contend that it was not aware of the facts giving rise to its protest on February 27,  
23 2014, through the Notice of Non-Selection and Bid Abstract provided, it was certainly aware the facts  
24 alleged to support its protest no later than March 5, 2014; after the meeting held between the GVB  
25 and PDS wherein the parties discussed PDS’ concerns regarding the disparity of prices of items offered  
26 to the GVB.

27 On March 6, 2014, the GVB sent a letter to PDS documenting the March 5<sup>th</sup> meeting which  
28 states in relevant part:

1 “In our meeting of 06 March 2014, you raised to us several concerns. We address these  
2 concerns as best we can and within the constraints of procurement law and regulation.

3 **“Having examined a bid cost summary in this solicitation, you noted great differences in**  
4 **bid amounts between Pacific Data Systems and another bidder.** Particularly, and as to  
5 Task 1, you ask whether the other bidder presented a quotation based upon an assessment of  
6 the existing closed circuit television system or replacement of that system. The Guam  
7 Visitors Bureau assumes all bidders read the solicitation carefully and responded according  
8 to its terms and call. *See pp. 51-52, Multi Step Procurement No. GVB 2014-002MS.*

9 “You state that the other bidder offered a bid amount as to Task IV that would result in a loss  
10 to that company. We do not know that the tendered bid would result in a loss to that other  
11 bidder and assume all bidders used their best business judgment in responding to the  
12 solicitation. In this solicitation, the Bureau seeks the lowest price from a responsible,  
13 responsive bidder.

14 “You also state that there was great disparity in the prices of items offered to the Bureau. We  
15 note the difference but have found all bidders in Phase 2 to be responsive to the Bureau’s  
16 needs.”

17 *See attached Exhibit C; Agency Report at Tab H; Agency Procurement Record at Tab B (Emphasis*  
18 *added).*

19 Importantly, the March 6, 2014 letter memorializes the fact that PDS examined the bid cost  
20 summary in this solicitation. The facts alleged to support PDS’ protest are based on disparity of prices  
21 of items offered to the GVB. Therefore, any written protest should have been submitted to the GVB  
22 within 14 days of said meeting, or by March 19, 2014. However, PDS did not submit its bid protest  
23 until March 24, 2014 – approximately 19 days after it knew of the facts giving rise to its protest.  
24 The protest is still untimely and should be dismissed.

25 **C. PDS’ PROTEST WAS NOT BASED ON INFORMATION GVB PROVIDED IN RESPONSE TO ITS**  
26 **FOIA REQUEST.**

27 PDS contends that its protest was timely because it was based on information received by the  
28 GVB on March 10, 2014, in response to its FOIA request. Said FOIA requested copies of (1) the bid  
package submitted by G4S; (2) communications between GVB and G4S; (3) documents related to  
meetings between GVB and G4S; and (4) technical evaluations performed by GVB. *See attached*  
*Exhibit B; Agency Procurement Record at Tab B.*



# EXHIBIT A



February 27, 2014

Ms. Teresa K. Sakazaki  
Marketing and Sales Director  
G4S Security Systems (Guam) Inc.  
1851 Army Drive  
Harmon, Guam 96913

**Subject:** Notice of Award  
**Reference:** Multi-Step Bid No. GVB-2014-002MS for CCTV Surveillance System

*Håfa Adai* Ms. Sakazaki,

Congratulations! GVB is pleased to issue this Notice of Award to G4S as the offeror selected by the evaluation committee as the lowest responsive and responsible offeror to complete the CCTV Surveillance Systems Scope of Work and Services as solicited in Multi-Step Bid No. GVB-2014-002MS. The Abstract is attached for your review.

As this project involves four phases to be completed over a period of time, as stated in the solicitation, a contract will be jointly developed and mutually agreed upon by GVB and G4S. Once the contract is signed, GVB will issue the Notice to Proceed.

Thank you for G4S Security Systems (Guam) Inc.'s (G4S) Technical and Cost Bid submissions in response to GVB 2014-002MS for CCTV Surveillance Systems.

Please contact our office at (671) 646-5278 should you have any questions.

*Senseramente',*

**KARL A. PANGELINAN**  
General Manager and  
Chief Procurement Officer

*Attachment: Bid Abstract*

*QUINIAN  
SUD 2/28/14*





February 27, 2014

Mr. John Mantanona  
Government Accounts Manager  
Pacific Data Systems (PDS)  
185 Ilipog Drive  
HBC Suite 204A  
Tamuning, Guam 96913

**Subject:** Notice of Non-Selection  
**Reference:** Multi-Step Bid No. GVB-2014-002MS for CCTV Surveillance System

*Håfa Adai* Mr. Mantanona,

Thank you for Pacific Data Systems' (PDS) Technical and Cost Bid submissions in response to GVB 2014-002MS for CCTV Surveillance Systems. The evaluation committee has completed its work and reviewed all the proposals.

GVB has elected to pursue a contract with another offeror. The Abstract is attached for your review.

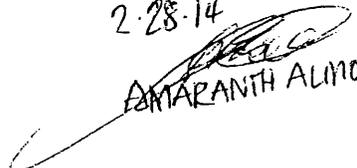
We appreciate PDS' time and effort to prepare and submit your proposal. As other opportunities arise, GVB will keep PDS informed and we thank you for the business relationship PDS and GVB have built over the years.

Please contact our office at (671) 646-5278 should you have any questions.

*Senseramente,*

  
**KARL A. PANGELINAN**  
General Manager  
Chief Procurement Officer

*Attachment: Bid Abstract*

2.28.14  
  
AMARANTH ALIMENTO

# EXHIBIT B

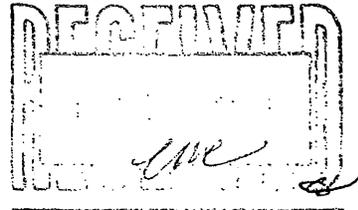
# PDS

Pacific Data Systems

March 4, 2014

Via Hand Delivery

Mr. Karl Pangelinan  
General Manager  
Guam Visitors Bureau (GVB)  
401 Pale San Vitores Road  
Tumon, Guam 96913



**RE:** Freedom of Information Act

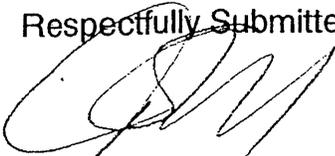
Dear Mr. Pangelinan:

Reference the process for Freedom of Information Act (Section 10103 of Title 5 Guam Code Annotated), Pacific Data Systems request copies of the following information:

1. The bid package submitted by G4S for GVB-2014-00MS.
2. All communications (emails, letters, faxes, documents, billings, etc.) between GVB and G4S, between December 30, 2013 and March 4, 2014.
3. Documentation related to any meetings between the Guam Visitor Bureau and G4S between December 30, 2013 and March 4, 2014 related to GVB-2014-002MS. Including who attended these meeting(s), meeting notes or documents, presentations, or any electronic recordings of the meeting(s).
4. Any and all technical evaluations that were performed by GVB regarding procurement GVB-2014-002MS.

Please call me at 300-0229 or email me at [jsm@pdsguam.com](mailto:jsm@pdsguam.com) when this information is available for pickup.

Respectfully Submitted,



John Mantanona  
Government Account Manager

# EXHIBIT C



March 6, 2014

Mr. John Day  
Pacific Data Systems  
185 Illipog Dr.  
HBC Suite 204A, Tamuning, Guam 96913

RE: Multi Step Procurement No. GVB 2014-002MS , A Closed Circuit Television Surveillance System at Tumon and Hagatna Bay, Guam

*Håfa Adai* Mr. Day,

In our meeting on 05 March 2014, you raised to us several concerns. We address these concerns as best as we can and within the constraints of procurement law and regulation.

Having examined a bid cost summary in this solicitation, you noted great differences in bid amounts between Pacific Data Systems and another bidder. Particularly, and as to Task 1, you asked whether the other bidder presented a quotation based upon an assessment of the existing closed circuit television system or replacement of that system. The Guam Visitors Bureau assumes that all bidders have read the solicitation carefully and responded according to its terms and call. See pp. 51-52, *Multi Step Procurement No. GVB 2014-002MS*.

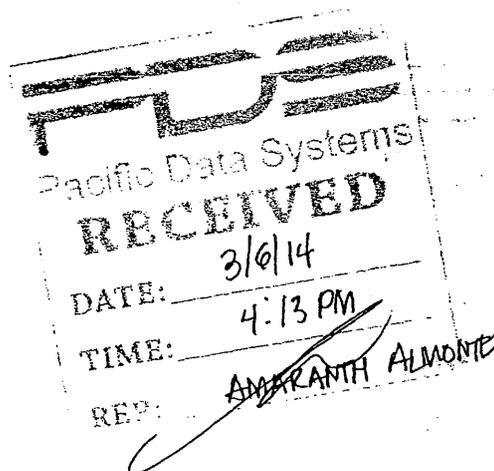
You stated that the other bidder offered a bid amount as to Task IV that would result in a loss to that company. We do not know if the tendered bid would result in a loss to that other bidder and assume all bidders used their best business judgment in responding to the solicitation. In this solicitation, the Bureau seeks the lowest price from a responsible, responsive bidder.

You also stated that there was great disparity in the prices of items offered to the Bureau. We've noted the difference, but have found all bidders in Phase 2 to be responsive to the Bureau's needs.

Thank you for your interest in this solicitation and hope you will participate in future Bureau procurements as appropriate.

*Senseramente'*,

  
JON NATHAN P. DENIGHT  
Acting General Manager



# EXHIBIT D



March 10, 2014

Mr. John Mantanona  
Government Account Manager  
Pacific Data Systems  
185 Illipog Dr., Suite 204A  
Tamuning, Guam 96913

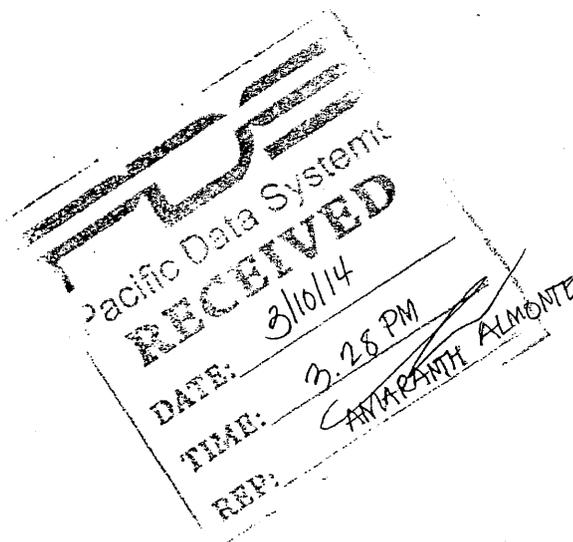
RE: "Sunshine Act" request, 04 March 2014

*Håfa Adai* Mr. Mantanona,

We are in receipt of your "Sunshine Act" request dated 04 March 2014. Requested things and documents are available for your inspection at our offices during normal business hours. Please note that we will not provide a "bid package submitted by G4S for GVB-2014-00MS". Please see 2 Guam Admin. R. & Reg. §3109(v)(2)(c) and 5 Guam Code Ann. §10108(i). Otherwise, copies of these things and documents will be provided upon request. Please be aware that pursuant to 5 Guam Code Ann. §10203(b), a fee will be charged for this service.

*Senseramente'*

Jon Nathan Denight  
Acting General Manager





March 10, 2014

Mr. John Mantanona  
Pacific Data System (PDS)  
185 Ilipog Drive  
HBC Suite 204A  
Tamuning, Guam 969113

Subject: GVB Response to PDS FOIA dated March 4, 2014

*Håfa Adai* Mr. Mantanona,

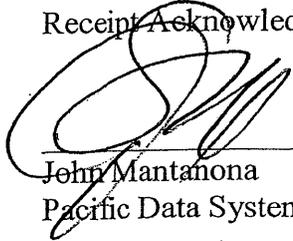
Attached please find the requested information relative to PDS' request to GVB referenced above. This response is timely pursuant to FOIA requirements.

Please note this transmittal is provided without charge. Standard FOIA requests are billable at the rate of 10 cents for the first page and 2 cents for each page thereafter. Any future requests will be at the rates mandated by law.

*Senseramente'*,  
For Nathan Denight  
Deputy General Manager  
  
By Anne Camacho  
Management Analyst

Enclosure:  
49 pages re: GVB-G4S  
Bid No. GVB-2014-002MS

Receipt Acknowledgement:

  
John Mantanona  
Pacific Data Systems

Date: 3/10/2014

GUAM VISITORS BUREAU





March 10, 2014

Via Hand Delivery

Mr. Karl Pangelinan  
General Manager  
Guam Visitors Bureau (GVB)  
401 Pale San Vitores Road  
Tumon, Guam 96913

**RE:** Freedom of Information Act

Dear Mr. Pangelinan:

Reference the process for Freedom of Information Act (Section 10103 of Title 5 Guam Code Annotated), Pacific Data Systems request copies of the following information:

1. The bid package submitted by G4S for GVB-2014-002MS.

Please call me at 300-0229 or email me at [jsm@pdsguam.com](mailto:jsm@pdsguam.com) when this information is available for pickup.

Respectfully Submitted,



John Mantanona  
Government Account Manager

RECEIVED

MAR 10 2014

GUAM VISITORS BUREAU



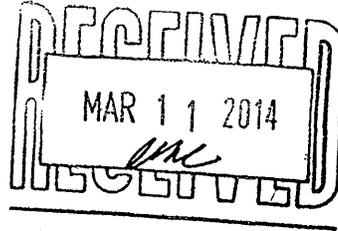
# EXHIBIT E



March 11, 2014

Via Hand Delivery

Mr. Karl Pangelinan  
General Manager  
Guam Visitors Bureau (GVB)  
401 Pale San Vitores Road  
Tumon, Guam 96913



**RE: PDS Freedom of Information Act Request related to GVB-2014-002MS**

Dear Mr. Pangelinan:

On March 4, 2014, PDS made a Freedom of Information Act request to GVB regarding the above referenced procurement. On March 10, 2014, GVB provided a partial response to the PDS request. However, GVB's response did not include all of the documents requested by PDS from GVB. Specifically, GVB did not provide any of the information requested by PDS from the G4S Bid Documents and Technical Bid.

GVB did not provide a valid explanation as to why all of the requested documents were not produced within the statutory timeline other than vague reference to 2 GAR §3109(v)(2)(c) and 5 GCA §10108(i). It is important to note that the regulations and statute referenced by GVB do not allow for the wholesale exclusion of public disclosure of a bidder's Bid Documents and Technical Bid. In fact, these sections actually require the bidder, G4S, to have specifically requested such confidentiality treatment in accordance with 2 GAR §3109(l)(2) and 2 GAR § 3109(l)(3), the relevant language of which states as follows:

**2 GAR §3109 (l) Receipt, Opening, and Recording of Bids. (2) Opening and Recording**

The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in Subsection 3109(l)(3) of this section. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

**(3) Confidential Data.** The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing what portions of the bids will be disclosed and that, unless the bidder protests under Chapter 9 (Legal and Contractual Remedies of this Guam Procurement Regulations), the bids will be so disclosed. The bids shall be opened to public inspections subject to any continuing prohibition on the confidential data.



Based on the regulations noted above, G4S must have specifically made a request for confidential treatment of its bid information and separated this requested confidential information from the public parts of its bid. If G4S did not do this, then all of the G4S bid information is available for public access per PDS' request of March 4, 2014. However, regardless of any requests by G4S for confidentiality, it is the obligation of the GVB Procurement Officer to make a determination if such a request meets the requirements for confidential treatment.

The above regulations make it clear that certain information "Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment" (reference 2 GAR §3109 (l)(3)) cannot be classified as confidential regardless of the bidder's request. In addition, any generally available information, such as product brochures or literature, business licenses, completed bid forms, etc must be considered confidential since the information is available in the public domain and these documents cannot be withheld as confidential.

GVB has not provided any of the information from the G4S Bid Documents and Technical Bid that are clearly not confidential and should be available for public disclosure as requested by PDS. The following is a specific list of the various types of information/documents that GVB should have provided in response to the PDS request of March 4, 2014:

- G4S signed bid forms/documents reference GVB Bid forms pages 1, 2, 3
- G4S signed bid Affidavits reference GVB Bid pages 16, 17, 18, 19, 20, 21 .
- Copies of G4S Business license(s) and any other pertinent Government licenses
- G4S copies of DOL wage listing reference GVB page 17
- Copies of G4S Product Literature as applicable
- G4S Technical Response to GVB Bid Phase I
- G4S Technical Response to GVB Bid Phase II
- G4S Technical Response to GVB Bid Phase III
- G4S Technical Response to GVB Bid Phase IV
- G4S Technical Response to GVB Bid Phase V
- G4S Technical Response to GVB Bid Phase VI

PDS requests that GVB comply fully with the Freedom of Information Act request made by PDS on March 4, 2014, and immediately provide all of the information requested. Failure to do so will be a violation of law subject to civil penalties as defined in 5 GCA § 10112 - Penalties for Nondisclosure.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Day', is written over a white background.

John Day  
President

# EXHIBIT F



March 13, 2014

Mr. John Day  
Government Account Manager  
Pacific Data Systems  
185 Illipog Dr., Suite 204A  
Tamuning, Guam 96913

RE: Letter on 11 March 2014, concerning a "Sunshine Act" request, 04 March 2014

*Håfa Adai* Mr. Day,

We are in receipt of your letter dated 11 March 2014, concerning a "Sunshine Act" request.

In that letter you stated that the Guam Visitors Bureau provided a partial response and assume certain requested material was withheld as confidential. *See your letter at passim.* Your assumption is incorrect. Please note that 2 Guam Admin. R. & Reg. 3109(v)(2)(c) states "after award the unpriced technical offer of the successful bidder shall be disclosed as follows . . . ." Thus another's technical offer may be disclosed, but not until *after award*.

Please be aware that the Guam Visitors Bureau responds to requests pursuant to the "Sunshine Act" in accordance with law.

*Senseramente',*

**JON NATHAN DENIGHT**  
Acting General Manager  
Guam Visitors Bureau

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4:05 PM

3/13/14

AMARANTH ALMONTE