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9 **OFFICE OF PUBLIC ACCOUNTABILITY**

10 Docket No. OPA-PA 14-013

11 In the Appeal of
12 *PACIFIC DATA SYSTEMS, INC.,*
13
14 Appellant.

15 **HEARING BRIEF OF PACIFIC DATA**
16 **SYSTEMS, INC.**

17 The Appellant Pacific Data Systems, Inc. ("PDS") submits the following as its
18 Hearing Brief.

19 **I. DOCOMO AND GPA FAILED TO COMPLY WITH THE IFB**

20 The issue in this appeal is simple. On November 17, 2014, PDS filed a protest
21 regarding Guam Power Authority's ("GPA") issuance of a Bid Status, which
22 recommended the award of items A-3, A-4, and A-5 in GPA-IFB-072-14 to Docomo
23 Pacific, Inc. ("Docomo"). PDS's protest was based on the fact that Docomo has not been
24 authorized by the Guam Public Utilities Commission ("GPUC") to provide these
25 regulated intra-state telecommunications services. GPA denied the PDS protest on
26 November 21, 2014, and this appeal followed.

27 Docomo claims that its affiliate Guam Telecom, LLC ("GTL") has the required
28 GPUC authority. PDS admits that GTL has the required authority, and further that GTL
is an affiliate of Docomo. The IFB does allow a bidder to perform the required services
through an affiliate. Because of this, the IFB requires the bidder to provide detailed
information regarding the affiliate's qualifications to meet the requirements of the IFB.
However, Docomo failed to provide the required information regarding GTL, and thus

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failed to comply with the IFB. Because Docomo did not provide the required information regarding GTL or clearly state how and what IFB services that GTL would perform, GPA could not have evaluated the qualifications of GTL. GPA thus violated the IFB in recommending the award of items A-3, A-4, and A-5 to Docomo.

GPA recommended the award of items A-1 and A-2 of the IFB to Docomo. Those items are for internet service, which is unregulated, and which may be provided by Docomo. PDS did not protest GPA's recommendation that those services be awarded to Docomo. However, items A-3, A-4, and A-5 of the IFB are for Intra-State Telecommunications Data Services. These services are regulated and require a Certificate of Authority from GPUC which Docomo does not have. Although Docomo and GTL share a common parent, they are separate legal entities. It was therefore necessary for GPA to review the qualifications of GTL separate and apart from Docomo in order to determine whether GTL met the qualification requirements of the IFB for items A-3, A-4 and A-5.

As will be demonstrated at the hearing, the IFB required extensive information regarding any affiliate of the bidder that would be providing services. For example, Section 2.10.1.1(a) requires that the bidder provide company information such as name, local address, corporate headquarters, business structure, nature of services provided, Articles of Incorporation and Bylaws for both the bidder and any affiliate company. Section 2.10.1.1(b) requires information regarding past and current information in the supply of voice and data services, including a list of clients for the last five years. Section 2.10.1.1(c) specifically requires that both the bidder and any affiliates provide their qualifications for the performance of the requirements of the contract.

Quite to the contrary, in its submission, Docomo did not even directly identify GTL. The only reference to GTL in Docomo's bid submission was the attachment of GTL's business license and GPUC/Federal Communications Commission filings related

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to GTL. Since none of the information required by the IFB regarding GTL was provided in the Docomo bid submission, it was not possible for GPA to determine whether GTL met the required qualifications, or compare GTL's qualifications with the qualifications of other bidders. In fact, there was no evaluation of GTL by GPA at all in the review of the Docomo bid submission. It was therefore a violation of the IFB for GPA to recommend the award of items A-3, A-4 and A-5 to Docomo.

II. GPA HAS VIOLATED THE AUTOMATIC STAY

On January 22, 2015, PDS filed a Motion to Enforce Automatic Stay. Counsel for GPA stated he would respond to that Motion, but has not done so as of today. PDS was authorized to bring its Motion up at the hearing on the merits. PDS submitted several exhibits bearing on GPA's violation of the automatic stay in its Exhibit binder. PDS incorporates herein the arguments it made in its January 22, 2105 Motion to Enforce Automatic Stay.

III. REMEDIES

PDS requests (1) an Order from the OPA that cancels GPA's recommendation of award or any award that has been made to Docomo for its items A-3, A-4, and A-5 in the IFB, (2) an Order awarding items A-3, A-4 and A-5 to PDS as the lowest responsible bidder, (3) an Order immediately enforcing the automatic stay, (4) an Order declaring void any award of items A-3, A-4 and A-5 during the period of the automatic stay beginning on November 17, 2014, and (5) an Order declaring void any awards made by GPA via Requests For Quotations related to any services covered by this procurement during the period of the automatic stay beginning on November 17, 2014.

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DATED this 6th day of February, 2015.

Respectfully submitted,

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Attorneys for Appellant
PACIFIC DATA SYSTEMS, INC.

By: 
BILL R. MANN