OFFICE OF PUBLIC ACCOUNTABILITY PROCUREMENT APPEALS PACIFIC DATA SYSTEMS 1 185 ILIPOG DRIVE 5/13/2015 DATE: HBC BLDG SUITE 204A TIME: 5:00 DAM PM BY: M.B. TAMUNING, GUAM 96913 TELEPHONE: (671) 300-0200 FACSIMILE: (671) 300-0265 FILE NO OPA-PA: 3 4 **BEFORE THE** OFFICE OF PUBLIC ACCOUNTABILITY 5 6 In the Appeal of PACIFIC DATA SYSTEMS, INC. OPA-PA-15-003 **HEARING BRIEF OF** 8 PACIFIC DATA SYSTEMS, INC. Appellant 9 10 11 The Appellant Pacific Data Systems, Inc. (PDS) submits the following as its Hearing Brief. 12 I. THE GSA RFQ SERVICE SPECIFICATIONS ARE AMBIGUOUS AND PREVENT THE CLEAR 13 DETERMINATION OF THE NATURE OF THE SERVICES BEING PROCURED. 14 The review of the service description and specifications used in this RFQ by GSA shows that 15 GSA seems to have requested quotes for two completely different types of services; Dark Fiber 16 service, and 1Gb Data service. These are distinctly different services both in their capability and also in the regulatory treatment for companies that are authorized to provide these services on 17 Guam. See Title 12, Chapter 12 §12102(i) and §12103(a). 18 19 Guam Procurement Law (5 G.C.A. §5260) does not allow for the use of ambiguous specifications 20 and require GSA to clearly describe the services to be procured. 21 22 II. 1GB DATA SERVICES ARE UNDER A STAY, DARK FIBER SERVICES ARE NOT 23 It appears that GSA and PDS agree that 1Gb Data Services were bid under GSA-IFB-064-11 and 24 that Dark Fiber services were not. As such, 1Gb Data Services are covered by an Automatic 25

RECEIVED

XC:

Stay pending the final determination of the appeal in the GSA-IFB-064-11 procurement. See 5 G.C.A. §5425(g).

Since there are no appeals pending regarding Dark Fiber services, these services are not under any Stay and GSA is free to procure these services via a properly formulated procurement.

III. REMEDIES

Resolution of this matter is simple, the OPA should instruct GSA to cancel the existing procurement or as an alternative modify the procurement to clearly define the service to be procured. Based on the filings by the GSA in this matter, it seems that GSA would like to acquire Dark Fiber services rather than the 1Gb Data Services that they have specified in this procurement. If so, GSA should clearly articulate the requirement for Dark Fiber services with specific requirements and specifications.

RESPECTFULLY SUBMITTED this 13th day of May, 2015.

PACIFIC DATA SYSTEMS

JOHN DAY President

David J. Highsmith, Assistant Attorney General