

1 PACIFIC DATA SYSTEMS
185 ILIPOG DRIVE
2 HBC BLDG SUITE 204A
TAMUNING, GUAM 96913
3 TELEPHONE: (671) 300-0200
FACSIMILE: (671) 300-0265



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

7 In the Appeal of)
8)

9 PACIFIC DATA SYSTEMS, INC.)
Appellant,)

10 GENERAL SERVICES AGENCY,)
Purchasing Agency.)

DOCKET NO. OPA-PA-15-012

OPPOSITION TO MOTION TO DISMISS

11
12 The Government of Guam, General Services Agency (GSA) Motion to Dismiss made in this appeal is
without foundation and should be DENIED for the following reasons:

- 13
14 1. It is clear that the Protest made by PDS was a protest of the Award Decision made by GSA as
evidenced by the Bid Status and Notice of Intent to Award issued by GSA in this procurement
15 (see Procurement Records Section 1 for PDS Protest Exhibit A). This notice from GSA was
received by PDS on September 3, 2015. In this notice, GSA communicated to PDS, for the first
16 time, its intent to award the bid to G4S. As clearly stated in the first sentence of the PDS Protest
letter delivered to GSA on September 17, 2015 (within the required 14 day protest period, see
17 PDS Protest Letter at Exhibit 1 of the PDS Appeal) the basis for the PDS Protest was the Award
Decision made by GSA in this bid. GSA confirmed its understanding of this point when it
18 acknowledged the basis for the PDS protest in the very first sentence of its Protest Decision letter
issued the day after it received the PDS Protest where GSA stated as follows:

19 *"We are in receipt of your protest dated September 17, 2015, in which you are[a] protesting the*
award on the above stated bid." (emphasis added)

20
21 GSA is misconstruing the facts of the PDS Protest. The actual facts are very clear; the reason for
the PDS Protest was the Award Decision made by GSA in this procurement. PDS was not aware
22 of the GSA Award Decision until September 3, 2015, and after being so informed, did timely
protest the Award within the 14 days allowed by the law.

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: November 13, 2015

TIME: 3:42 AM PM BY: NR

FILE NO OPA-PA: 15-012

1 2. In GSA's Motion to Dismiss, GSA takes the time to quote the applicable Guam Law that governs
2 Procurement Protests, but apparently fails to comprehend the application of the law in this
3 specific case. 5 GCA § 5425(a) states as follows:

4 ***“Right to Protest. Any actual or prospective bidder, offeror, or subcontractor who may be
5 aggrieved in connection with the method of source selection, solicitation or award of a
6 contract, may protest to the Chief Procurement Officer...” (emphasis added).***

7 The PDS Protest complies with the law; since, as stated in the PDS Protest, the issue that PDS has
8 protested in this procurement is the Award Decision made by GSA, a right granted to PDS as a
9 bidder/offeror that was aggrieved in connection with the award of this bid to G4S. Again, the
10 PDS Protest was timely since it was made within the 14 day period allowed by the law after being
11 informed of the GSA Award Decision.

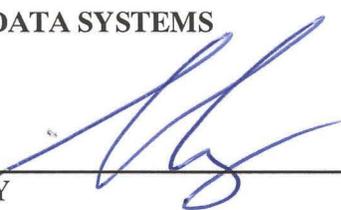
12 3. GSA has failed to explain the conflict in the position that GSA has now taken in this protest with
13 the position that GSA has taken in a previous PDS Protest that was lodged at the time of a bidder
14 mistake discovered at a public bid opening, see PDS Appeal at IV.1 reference a protest made by
15 PDS in IFB-064-11. GSA denied the PDS protest as premature since no decision or action on the
16 issues identified by PDS had been made by GSA. Now, in this Procurement Protest, GSA has
17 taken a completely different position stating that PDS should have protested the G4S bid
18 submission deficiencies even though GSA had made no decision to accept/reject the G4S bid, or
19 made an award to G4S.

20 4. This procurement appeal raises important issues regarding the timeliness of when protests should
21 be made, and the responsibility of GSA to properly evaluate Bidder submissions prior to making
22 an award. An OPA review of this procurement will insure that PDS is provided the due process
23 promised by Guam Procurement Law and Regulations and allow the OPA to render a decision on
24 these important issues that will hopefully insure the integrity of the Procurement Process.

25 For the above stated reasons, the GSA Motion to Dismiss should be DENIED.

RESPECTFULLY SUBMITTED this 13th day of November 2015.

PACIFIC DATA SYSTEMS



JOHN DAY
President

cc: Robert M. Weinberg/Assistant Attorney General - Office of the Attorney General