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OFFICE OF PUBLIC ACCOUNTABILITY

1	D. GRAHAM BOTHA, ESQ.	PROCUREMENT APPEALS DATE: 02/06/15
2		And the second s
3		TIME: 4:10 DAM PPM BY: C. Roque
4	0,	FILE NO OPA-PA: 14-013
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8	Attorney for the Guam Power Authority	
10	OFFICE OF THE PUR	
11 12	PROCUREMENT	APPEALS
13	IN THE APPEAL OF)	OOCKET NO. OPA-PA-14-013
15 16	PACIFIC DATA SYSTEMS, INC.	APPELLEE'S HEARING BRIEF
17		
18		
20		
21		ORITY, by and through its counsel of
22 23	record, D. GRAHAM BOTHA, ESQ., and submits its	s Hearing Brief for the February 9, 2015,
24	hearing as follows.	
25	ARGUME	ENT
26	Guam Power Authority (GPA) submits that it	properly awarded items A1-A5 to Docomo
27	Pacific Inc. (Docomo), the lowest responsive and responsive	ponsible bidder. A responsive bidder is a
28	person who submitted a bid which conforms in all ma	aterial respects to the Invitation for Bids. 5
29	GCA §5102(g), 2 GAR Div. 4, §3109(n)(2). PDS adr	mits that Docomo was the lowest responsive
80	bidder for items A-1 and A-2, but contends that Doco	omo should be disqualified from consideration
31	for items A-3, A-4, and A-5. It is clear that Docomo	informed GPA in its submission that it had
32	acquired MCV Broadband. The cover letter of the De	ocomo submission indicates that MCV
3	Broadband, which provides wireless voice and data se	ervices, high speed internet data solution and
4	business services/systems (SIP), was recently acquire	d by Docomo. The Certificate of Authority
5	issued to Guam Telecom, LLC, a subsidiary of MCV	Broadband, was provided to GPA and

- 1 indicates that it has been issued a Certificate of Authority in compliance with 12 GCA §12103.
- 2 GPA reviewed all the Certificates of Authority from the PUC provided by each of the three
- 3 bidders, Docomo, PDS, and GTA and found them satisfactory, and accordingly all three bidders
- 4 were qualified technically. Minor informalities are matters of form, rather than substance evident
- 5 from the bid document, or insignificant mistakes that can be waived or corrected without prejudice
- 6 to other bidders; that is, the effect on price, quantity, quality, delivery or contractual conditions is
- 7 negligible. 2 GAR Div. 4, §3109(m)(4).
- 8 After reviewing the technical qualification of all bidders, GPA determined that the proposal
- 9 submitted by Docomo for items A-1, A-2, A-3, A-4, and A-5 was the lowest bid, and the proposal
- submitted by PDS for items A-6, and A-7 to A-13 was the lowest bid.
- PDS has also complained that Request for Quotations (RFQ) were issued for voice and data
- services provided to GPA at Fadian. Interestingly, PDS has not only responded to several of these
- 13 RFQs, but in fact was awarded and accepted performance under the RFQs. These include RFQ
- 14 #27367 (Purchase Order #21036), RFQ #27431 (PO #21136), RFQ #27447 (PO #21238), and
- 15 RFQ #27519. PDS apparently only protests those RFQs where it either chooses not to bid, or
- where it lost the bid because it was not the low bidder. These include RFQs, 27443, 27444, 27445,
- and 27446. Due to the multiple protests filed by PDS, GPA has not made any award for RFQs
- 18 27444, 27445, and 27446. GPA determined that it was critical to implement the 30 MBps WAN
- 19 link from Macheche to Fadian (RFQ #27443; PO #21152), and therefore made an award to
- 20 Docomo. The RFQs were all done properly under small procurement for services less than
- \$15,000, and PDS was provided the opportunity to compete with other vendors, to include
- Docomo and GTA. PDS bid on RFQ #27418 (awarded to GTA) and RFQ #27431 (awarded to
- 23 PDS), before it decided to protest any other RFQs subsequently issued by GPA.

1	GPA properly awarded items A-1 to A-5 to Docomo Pacific Inc. as the lowest responsive
2	and responsible bidder for those items. GPA relied upon the documents provided by Docomo and
3	its affiliated entities. Due to the protest by PDS, GPA issued RFQs for essential services at its new
4	location in Fadian, for which PDS bid on at least two of those RFQs, and in fact accepted and
5	performed under RFQ #27431 (PO #21136).
6 7 8	RESPECTFULLY SUBMITTED this 6 th day of February, 2015.
9	
10	DØRAHAM BOTHA, ESQ.
11	GPA Legal Counsel



GUAM POWER AUTHORITY

ATURIDÅT ILEKTRESEDÅT GUAHAN P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

December 05, 2014

Leah Salas Account Manager GTA TeleGuam Holdings 624 N Marine Corps Dr.

Reference: P.O. No: 21130

Dear Mrs. Salas

This is your Notice to Proceed for the above subject Purchase Order for the Central Offices and GPA/GWA Project located at Fadian Facility Mangilao.

Commencement date for this project is December 09, 2014 and expires on January 09, 2015.

Be advised that any changes which may impact the schedule or the value of this order must be noticed to the Supply Management Administrator and approved by the General Manager.

Technical questions are to be directed to Rudy Manibusan, at Tel. No: 635-3062. All other questions and/or concerns are to be directed to the Supply Management Administrator, Mrs. Jamie L.C. Pangelinan at 648-3054/55 or fax 648-3165.

Sincerely,

JOHN BENAVENTE, P.E. Interim General Manager

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SIGNATURE OF VENDOR

ACKNOWLEDGED BY:

VBARCINAS (THIS PURCHASE ORDER NUMBER **PURCHASE ORDER** No. 21130 **GUAM POWER AUTHORITY** MUST APPEAR ON ALL INVOICES P.O. Box 2977 PACKING SLIPS, PACKAGES, B/L. Hagatna, Guam 96932 CORRESPONDENCE, ETC. TELEPHONE: (671) 648-3054/5 PO DATE JOB ORDER NO./OBJ FAX: (671) 648-3165 12/04/14 31700.921000.39 **GTA TELEGUAM HOLDINGS VENDOR** V S RECEIVING SECTION: 5122568 E H 624 N Marine Corps Dr **GUAM POWER AUTHORITY** N I Attn: Jan Santos D P P.O. BOX 2977 0 **HAGATNA, GUAM 96932** R T TELEPHONE: (671) 648-3054/5 TEL: (671) 644-0100 Computer Services FAX: (671) 644-0103 AUTHORITY INVITATION NO. CONTRACT NO. | TIME FOR DELIVERY **EXPIRING** DISCOUNT TERMS: 3111(c) 01/09/15 **DESCRIPTION / SUPPLIER ITEM** QTY UNIT **UNIT PRICE AMOUNT DOCUMENT NUMBER** 27418OR added on to the invoice. RESTRICTION AGAINST SEX OFFENDERS: 5 GCA Section 5253, enacted by P.L 28-24 and amended by P.L. 28-98: The service provider warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted of an offense with the same elements as heretofore defined in any other jurisdiction, or who is listed on the Sex Offender Registry shall provide services on behalf of the service provider while on government of Guam property, with the exception of public highways. If any employee of the service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four (24) hours of the conviction, and will remove immediately such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four (24) hours of notice from the Government, and the service provider shall notify the Government when action has been taken. Page 2 of 4 << DO NOT FILL THIS INSTRUCTIONS TO VENDOR: ORDER IF YOUR TOTAL SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO GUAM POWER AUTHORITY. COST EXCEEDS THIS PO BOX 2977, CODE 33, HAGATNA, GUAM 96932 TOTAL TOTAL PAYMENT UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION

SIGNATURE OF VENDOR

DATE:

ACKNOWLEDGED BY:

IOHNAN BENAVENTE DE COTOR

SIGNATURE

12/4/14

JOHN M BENAVENTE, P.E., General Manage

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GUAM POWER AUTHORITY

ATURIDÂT ILEKTRESEDÂT GUAHAN P.O.BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

	as: vbarcinas@gpagwa.com		Tel: (671) 648-3054/3055	Fax: (671) 648-3165					
Accountability	Impartiality	Competence	Openness	Value					
	n as possible, 13/14, C.O.B Wednesday	Request for Quotate (RFQ) No.: 2741		12/02/14					
VENDOR:	614 1725,444 1) 644 • 0139 1) 644 • 01 0 3		Please furnish price quotation on CIF. Destination GPA for the items Please respond by the above of	listed below.					
Quoted by: (signature)			Quote Date:	Telephone:					
	Leah Salas - Superales		December 02, 2014	644-0132					
Delivery Date Required: Delivery Date Offered:	1 Day ARO Upon Services		Offering recyclable and /or bio						
	(30) THIRTY DAYS	-	() YES () NO Please separate your offer of recyclable and/or						
Prices Good For30			biodegradable products from i	regular products					

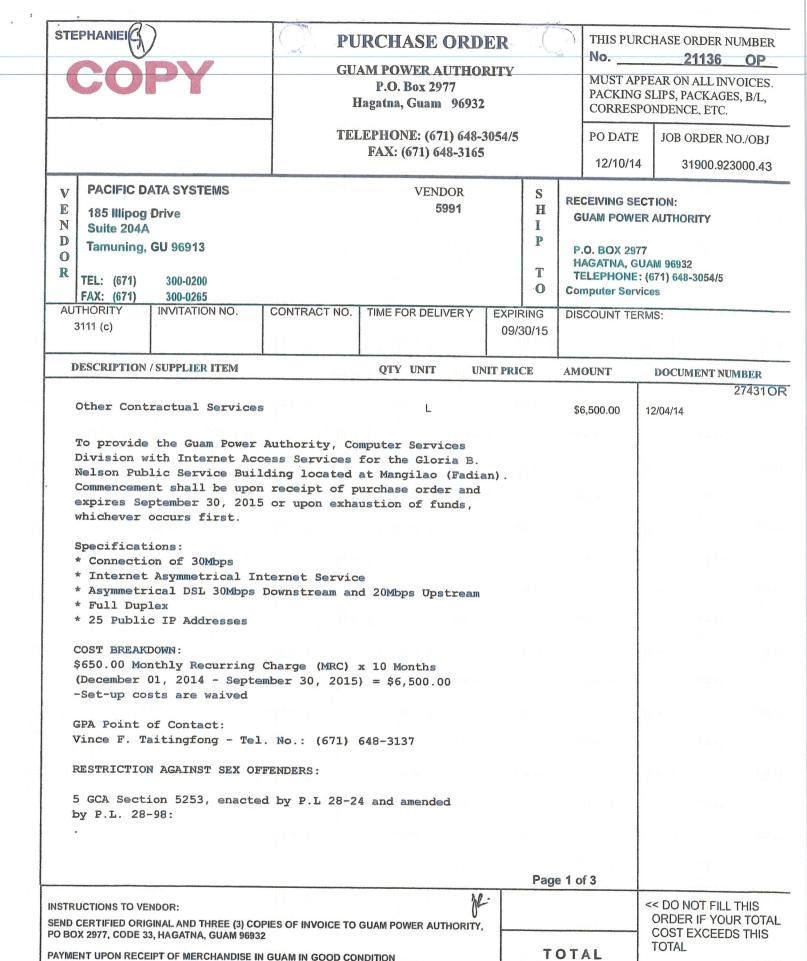
NOTICE: Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property, 3GCA Section 5253, enacted by P.L. 28-24 and amended by P.L. 28-98:

If a contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam Property, with the exception of public highway. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be In violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.

THIS IS NOT AN ORDER

		THIS IS NOT AN ORDER		
ITEM	Qty.		Unit Price	Extended Price
1.	L	To provide the Guam Power Authority, Computer Services Division with High capacity service carried on T1 trunk lines between telco central offices and GPA/GWA Fadian Facility:	MRC	6 Months
		SPECIFICATIONS:	\$2,175.39	\$13,052.34
		For 7 Primary Rate Interface (PRI Lines)	42,170.00	
		T1 digital signal into 24 channels of 64 Kbps capacity per channel; 23 of these channels to assigned as one telephone call each, the equivalent of having 23 separate telephone lines.	٠	
		 Features to include caller ID and information services 		
1	Revised	Inclusive of rate provided above. Charges for 411 calls: \$0.35 per minute		
	Koalsen	Direct Inbound Dialing (500 DID) for direct station calling	\$50.00	\$300.00
		** OR APPROVED EQUAL TO OR BETTER:		
		*Costs provided above do not include federally mandated charges as these charges will be calculated as a percentage of the total monthly recurring charges. And added on to the invoice. NOTE:		
		All Requests for Delivery Extensions will be Closely Scrutinized as all items/services are crucial to new Customer installations, maintenance, and on-going projects. * Installation / Delivery of services: 30 days after receipt of Purchase Order.		
		THANK YOU FOR YOUR RESPONSE		
		Note: If you are unable to provide a price quote please annotate		
		"NO QUOTE" and return this Fax: Vincent Barcinas		

Make GIPH regards 12/4/14



ACKNOWLEDGED BY:______ DATE:_____ DATE:_____ SIGNATURE OF VENDOR

RETURN TO PROCUREMENT DIVISION AT ABOVE ADDRESS

JOHN M. BENAYENTE, P.E., Interim General Manager Date

Nalanatad Authority

SIGNATURE:

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ACKNOWLEDGED BY:

SIGNATURE OF VENDOR

RETURN TO PROCUREMENT DIVISION AT ABOVE ADDRESS

Delegated Authority

STEPHANIEI (GV)	PU	RCHASE ORD	ER		1	CHASE ORDER NUMBER
COPY		AM POWER AUTHO P.O. Box 2977 Iagatna, Guam 96932			PACKING	PEAR ON ALL INVOICES. SLIPS, PACKAGES, B/L, ONDENCE, ETC.
	TEI	LEPHONE: (671) 648- FAX: (671) 648-3165			PO DATE 12/10/14	JOB ORDER NO./OBJ 31900.923000.43
PACIFIC DATA SYSTEMS 185 Illipog Drive Suite 204A Tamuning, GU 96913 TEL: (671) 300-0200 FAX: (671) 300-0265 AUTHORITY INVITATION NO. 3111 (c)	CONTRACT NO.	VENDOR 5991 TIME FOR DELIVERY	EXPIF 09/3	H I P T O	P.O. BOX 2977 HAGATNA, GU TELEPHONE: Computer Servi	CTION: R AUTHORITY PAM 96932 (671) 648-3054/5 ces
DESCRIPTION / SUPPLIER ITEM		QTY UNIT U	NIT PRIC	CE A	MOUNT	DOCUMENT NUMBER
Officers, and Employees, claims, judgements, costs arising from any act, om: Contractor, Subcontractor Employees, or arising from whatsoever caused to any any person, occurring dur of this contract. NOTE TO VENDOR: 1. Delivery is no later to the contract of the contract. NOTE TO VENDOR: 2. All late deliveries are liquidated Damages Classification of the contract of the contra	chan the date ind acceptance are maintenance, it will be parties.	f whatever nature gence of the gents, or injury or damage the property of nd performance ndicate above. The subject to the 6-101.09.01 of the will be closely expected to new and on-going this contract was a construed that the RIGINAL invoice,	e he			
				Page 3	3 of 3	
INSTRUCTIONS TO VENDOR: SEND CERTIFIED ORIGINAL AND THREE (3) C PO BOX 2977, CODE 33, HAGATNA, GUAM 969 PAYMENT UPON RECEIPT OF MERCHANDISE	932		,	*******************************	5,500.00 TAL	<< DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL
ACKNOWLEDGED BY:SIGNATURE	OF VENDOR	ATE:	OHN ME	l	E, P.E., Interim G	12/11/14 Jeneral Manager Date

Delegated Authority

RETURN TO PROCUREMENT DIVISION AT ABOVE ADDRESS

Stephanie M. Taijeron

From:

John Day <john@pdsquam.com>

Sent:

Thursday, December 11, 2014 4:13 PM

To: Cc: Stephanie M. Taijeron jsm@pdsquam.com

Subject:

RE: Purchase Order No.: 21136 for Acknowledgment

Hi Stephanie,

Since your fax machine is not working, please accept this email as an acknowledgement of PO 21136.

Thanks and regards,

John Day

Pacific Data Systems

From: Stephanie M. Taijeron [mailto:smtaijeron@gpagwa.com]

Sent: Thursday, December 11, 2014 2:27 PM

To: john@pdsguam.com **Cc:** jsm@pdsguam.com

Subject: Purchase Order No.: 21136 for Acknowledgment

Hafa Adai,

Please see attached Purchase Order No.: 21136 for acknowledgment. Kindly email signed acknowledgment to our office. Thank you.

Regards.

Stephanie M. Taijeron

GPA Procurement Materials/Mgmt.

Tel: (671) 648-3054/3055

Fax: (671) 648-3165

Email: smtaijeron@gpagwa.com

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Stephanie M. Taijeron

From:

Stephanie M. Taijeron

Sent:

Thursday, December 11, 2014 2:27 PM

To: Cc: 'john@pdsguam.com' jsm@pdsguam.com

Subject:

Purchase Order No.: 21136 for Acknowledgment

Attachments:

OP# 21136 - Pacific Data Systems for Acknowledgment.pdf

Hafa Adai,

Please see attached Purchase Order No.: 21136 for acknowledgment. Kindly email signed acknowledgment to our office. Thank you.

Regards,

Stephanie M. Taijeron

GPA Procurement Materials/Mgmt.

Tel: (671) 648-3054/3055 Fax: (671) 648-3165

Email: smtaijeron@gpagwa.com



GUAM POWER AUTHORITY

ATURIDÅT ILEKTRESEDÅT GUAHAN P.O.BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

FACSIMILE TRANSMITTAL COVER LETTER

			•
DATE:	December 11, 2014		
ATTENTION:	Pacific Data Systems	•	
PHONE:	(671) 300-0200		
FAX:	(671) 300-0265		
PO NO:	21136		
	e receipt, via return fax . Have A Nice Day!	, ,	3165
Received By:			
	Print Name		
recipients ONLY.	tice: The information in the literal transfer in the l	ns requiring the immedia	te attention of
Sent By:	Stephanie Taijeron		

Procurement Office 648-3054/3055

Requisition No.: 27431
Requisition Date: 12/05/2014
Resigned Date: 12/05/2014

									No. of		Extension	. यः : : : : : : : : : : : : : : : : : : :		
			Vendor Name: IT&E Corp.								Unit Price	No Response		
111 (c)		r No:	r Name:	топе:): ::				ry:	tion:	Unit		ponse	
Code: 3'	9 -	Vendor No:	Vendo	Telephone:	Fax No:	E-mail:	POC:	Date:	Delivery:	Expiration:	QTY		No Response	
Authorization Code: 3111 (c)			'n		CONTRACT CONDITION OF A CONDITION OF					115	Extension	\$25,000.00		
			Vendor Name: GTA Teleguam	1-4482	50		SO	4		Expiration: September 30, 2015	Unit Price	\$2,500.00 WRC x 10 Months (Dec 2014 - Sept 2015) = \$25,000.00		
		r No:	r Name:	Telephone; 644-4482	Fax No: 644-4050		POC: Jan Santos	Date: 12/10/2014	Ŋ:	tion: Sep	Unit	Lot	00.0	arded
	OP:	Vendor No:	Vendo	Teleph	Fax No	E-mail:	POC:	Date: (Delivery:	Expira	QTY		\$25,000.00	Not Awarded
			stems							13	Extension	\$6,500.00		
			Vendor Name: Pacific Data Systems	1200						Expiration: September 30, 2015	Unit Price	\$650.00 per Month x 10 Months (Dec 2014 - Sept 2015) = \$6,500.00 "As Specifed		
	36	Vendor No: 5991	Name: P	Telephone: 300-0200	Fax No: 300-0265		ohn Day	Date: 12/10/2014		on: Sep	Unit	Pot		
	OP: 21136	Vendor	Vendor	Telepho	Fax No:	E-mail:	POC: John Day	Date: 12	Delivery:	Expiration	QTY		\$6,500.00	\$6,500.00
		AND COMPANY OF THE PROPERTY OF	fic							015	Extension	Option 1: \$1,990.00 Does not meet GPA requirement upstream requires 20 mbps proposed 3 mbps per Rudy Manibusan on 12/10/2014 Option 2: \$7,500.00		
76.5			Vendor Name: Docomo Pacific	8-2273	247		POC: Ronnie Malveaux, Jr.	14		Expiration: September 30, 2015	Unit Price	Option 1: \$199.00 per Months x 10 Months (Dec 2014 - Sept 2015) = \$1,990.00 \$1,990.00 per Months (Dec 2014 - Sept 2016) = \$750.00 per Months (Dec 2014 - Sept	0.00	
		Vendor No:	or Name	Telephone: 688-2273	Fax No: 649-7247		Ronnie	Date: 12/10/2014	ery:	ation: Se	Unit Issue	Pot	Option 1: \$1,990.00 Option 2: \$7,500.00	Not Awarded
05/2014	9 9	Vend	Vend	Telep	Fax N	E-mail:	POC:	Date:	Delivery:	Expira	QTY		Option	Not Av
Requisition Date: 12/04/2014 Assigned Date: 12/05/2014		certify that the foregoing statement of informal	notation is true and correct and prices charged	brained	Maybean 12/10/10	Missing and Allell	otephanie Mr. Laijeron Juyer	warded to: Pacific Data Systems (Lowest Quote tesponse)			DESCRIPTION	o provide the Guam Power Authority, Somputer Services Division with Internet Access Services for the Gloria B. Nelson Public Service Building located at Mangilao Fadian). Commencement shall be upon aceipt of purchase order and expires ieptember 30, 2015 or upon exhaustion of ands, whichever occurs first. * Connection of 30Mbps * Internet Asymmetrical Internet Service * Asymmetrical DSL 30Mbps Downstream and * Z0Mbps Upstream * Full Duplex * 25 Public IP Addresses	OTAL AMOUNT:	JTAL AWARDED:



ATURIDÁT ILEKTRESEDÁT GUAHAN P.O BOX 2977 • ÁGANA, GUAM U.S.A. 96932-2977

Stepha Accountabil	me M. Taijeror lity	email: smtaijeron Impartiality		el: (671) 648-3 etence	8054/3055 Fax: Ореппе		Angel Control
out no later	thans	as possible, by 2:00 P.M.	Request for Que (RFQ) No.:			y's Date:	Prescription of the state of th
A CONTRACTOR OF THE PARTY OF TH		by E.OU F.IVI.	2743		Dece	mber 10, 2014	**************************************
/ENDOR:		-181-19-1-9		Please furnis	sh price quotat	ion, delivery	
		cific Data System	ns	time and ten	n based on CIF		
	Tel: 300-	0200 Fax: 300-	0265	Destination (GPA for the Itel	ns listed below.	6000000
Juoled by:	(signature)	and any and		Quote Date:	and by the abou		~
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		Required: September		Offering recy	clable and or	biodegradable	***************************************
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	***************************************	Stephanie Tail		un FAX IO	***************************************		***

Stephanie M. Taijeron

From:

John Day <john@pdsguam.com>

Sent:

Wednesday, December 10, 2014 1:44 PM

To:

Stephanie M. Taijeron

Cc:

'John Mantanona'

Subject:

GPA RFQ No.: 27431

Attachments:

GPA RFQ 27431 for Internet Access 12-10-2014.pdf

Importance:

High

Stephanie,

John Mantanona is off-island this week and has forwarded your request to me for a response. Please see the attached RFQ response from PDS. I will be your point of contact me if you have any questions regarding this RFQ.

BTW, I was unable to fax this RFQ to GPA (ring no answer for the fax number provided) and also there is message that plays for the telephone numbers that on the RFQ, so I would appreciate an email from you confirming receipt.

Sincerely,

John Day Pacific Data Systems

From: "Stephanie M. Taijeron" < smtaijeron@gpagwa.com>

Date: December 9, 2014 at 3:57:02 PM PST **To:** "jsm@pdsguam.com" <jsm@pdsguam.com>

Subject: RFQ No.: 27431

Hafa Adai,

The Guam Power Authority is seeking request for quotations for the attached requirement, and hopes that your company may provide a positive response by **2:00 P.M. today**. If you have any questions please let me know. Thank you and have a nice day!

Regards,

Stephanie M. Taijeron

GPA Procurement Materials/Mgmt.

Tel: (671) 648-3054/3055

Fax: (671) 648-3165

Email: smtaijeron@gpagwa.com

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