



Office of the Attorney General

Elizabeth Barrett-Anderson

Attorney General of Guam

Robert M. Weinberg

Assistant Attorney General

590 S. Marine Corps Drive

Tamuning, Guam 96913 • USA

(671) 475-3324 ext. 3095 • (671) 472-2493 (Fax)

rweinberg@guamag.org

Attorneys for Defendants

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 11-06-15

TIME: 11:25 AM PM BY: JW

FILE NO OPA-PA: 15-012

IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of)
)
)
PACIFIC DATA SYSTEMS,)
)
)
Appellant,)
)
)
GENERAL SERVICES AGENCY,)
)
)
Purchasing Agency.)
_____)

DOCKET NO. OPA-PA-15-012

**MOTION TO DISMISS APPEAL FOR
WANT OF JURISDICTION**

**(FAILURE TO TIMELY SUBMIT
NOTICE OF PROTEST)**

The Government of Guam, General Services Agency (GSA), respectfully moves the Office of Public Accountability to dismiss the above-styled procurement appeal for want of jurisdiction. Specifically, appellant Pacific Data Systems (PDS) failed to submit a timely written protest with the head of the purchasing agency within 14 days after it knew or should know of the facts giving rise thereto as required by 5 GCA § 5425(a). Accordingly, the Office of Public Accountability (OPA) is without jurisdiction to consider its appeal.

ORIGINAL

DISCUSSION

Guam law provides:

Right to Protest. Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency. **The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto.**

5 GCA § 5425(a)(emphasis added). “Protests filed after the 14 day period shall not be considered.” 2 GAR § 9101(c). Pacific Data Systems’ failure to submit its protest to the head of the purchasing agency in writing within 14 days after it knew or should have known of facts giving rise to its claim is fatal to its right to proceed.

It is undisputed, indeed by the very terms of the protest itself, that Pacific Data Systems submitted its protest to GSA more than 14 days after it knew of facts giving rise to the basis of its claim. In its protest letter dated and hand-delivered to Claudia Acfalle, Chief Procurement Officer, General Services Agency, on September 17, 2015 Pacific Data Systems stated that “[o]n July 28, 2015 GSA provided PDS with a copy of the G4S bid in this procurement in response to PDS[’s] Freedom of Information Act request.” PDS’s asserted basis for objecting to the award of the procurement to G4S was allegedly that

G4S did not include any evidence that G4S possessed the required contractor’s License at the time of the bid in order to meet this requirement of the Bid Terms and Conditions. For this reason, the G4S bid cannot be considered for award and should be rejected as non-responsive.

PDS Protest Letter dated Sept. 17, 2015. *See*, PDS’s Procurement Appeal, Ex. 1, pp. 1, 2.

Fourteen days from July 28, 2015 when G4S was provided a copy of G4S's bid would have been August 11, 2014, the last date PDS could have submitted its protest. But PDS's protest was not submitted until September 17, 2015, over seven weeks or 50 days past the date PDS admits it was on notice of facts necessary to state a basis for objecting to the award to G4S.

WHEREFORE, the government of Guam, General Services Agency, respectfully submits that the above-styled appeal must be dismissed for want of jurisdiction.

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General



ROBERT M. WEINBERG
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing upon opposing counsel by hand delivery addressed to:

John Day
Pacific Data Systems
185 Ilipog Drive, Suite 204A
Tamuning, GU 96913

this 6th day of November, 2015.



ROBERT M. WEINBERG
Assistant Attorney General