



Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

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**E-FILING: In the Appeal of Pacific Data Systems, Inc.; OPA-PA-21-001;**

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**Steven Carrara** <Steven.Carrara@itehq.net>

Mon, Jun 28, 2021 at 3:55 PM

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Hi Jerrick,

Attached is ITE's Motion's Motion to Dismiss.

Thank you.

Steve

[Quoted text hidden]

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 **IT&E Motion to Dismiss Protest OPA-PA 021-003 6-28-21.pdf**  
67K

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THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of ) IT&E Motion to Dismiss PDS Protest for Lack of  
 ) Standing  
 )  
 ) Docket No. OPA-PA 021-003  
Pacific Data Systems, Inc. (PDS) )  
 )  
 )  
Appellant.

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COMES NOW PTI Pacifica Inc, dba IT&E and hereby files its Motion to Dismiss the Protest of Pacific Data Systems Inc for lack of standing as a protesting party.

In the instant procurement the Guam Housing and Urban Renewal Agency received competitive bids in order of ranking from PTI Pacifica dba IT&E (\$31,980.00), DOCOMO Pacific (\$55,744.32) and PDS the incumbent service provider (\$60,204.00). Appeal File, Section 4, TabD, p 479.

As the third ranked bidder, PDS does not have the requisite standing to maintain its protest before the OPA or any other Guam tribunal because it's not an aggrieved party and is not otherwise in line for contract award regardless of the outcome of the instant protest.


The Guam Supreme Court as well the Office of Public Accountability have long held that a party must have requisite standing in order maintain an action before a Guam Court or an administrative agency. The Guam Supreme Court recently provided a detailed analysis

concerning standing in *DFS Guam L.P., v. A.B. Won Pat International Airport Authority*, 2019 Guam 6. In affirming a long standing line of Guam case law and decisions, the Guam Supreme Court found that regardless of whether standing is premised on a Constitutional, Statutory or common law principle, the aggrieved party must demonstrate an injury in fact. *ID* at 13.

Under no set of circumstances can PDS demonstrate an injury in fact in order for it to maintain standing in the instant procurement because its much higher bid was third in line for potential contract award. Regardless of PDS' protest allegations, which IT&E disputes as invalid, the fundamental fact is that the PDS bid is not inline for contract award as the most expensive bid. In this regard, the PDS protest must be dismissed for lack of standing. The PDS protest is nothing more than an attempt to perpetuate its status as the incumbent provider while its defective protest is under consideration.

Dated this 28<sup>th</sup> day of June 2021.

PTI Pacifica Inc. dba IT&E

By:   
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Steven Carrara  
General Counsel