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# FAX

<b>To:</b>	<b>Mr. Raymond Topasna, Executive Director</b> Guam Housing and Urban Renewal Authority 117 Bien Venida Avenue Sinajana, Guam 96910 Phone: (671) 477-9851 Fax: (671) 300-7565 Email: <a href="mailto:rstopasna@ghura.org">rstopasna@ghura.org</a>	<b>From:</b>	<b>Benjamin J.F. Cruz</b> <b>Guam Public Auditor</b> Office of Public Accountability
	<b>Mr. Anthony C. Perez, Esq.</b> Law Office of Anthony C. Perez Suite 802, DNA Building 238 Archbishop Street Hagatna, Guam 96910 Phone: (671) 475-5055/7 Fax: (671) 477-5445 Email: <a href="mailto:acp@perezlawguam.com">acp@perezlawguam.com</a>	<b>Pages:</b>	6 (including cover page)
<b>CC:</b>	<b>Mr. John Day, President</b> Appellant Pacific Data Systems, Inc. (PDS) 185 Ilipog Drive, Suite 204A Tamuning, Guam 96913 Phone: (671) 300-0202 Fax: (671) 300-0265 Email: <a href="mailto:john@pdsguam.com">john@pdsguam.com</a>	<b>Date:</b>	July 16, 2021
	<b>Mr. Joshua D. Walsh, Esq.</b> Attorney for Appellant PDS Razano Walsh & Torres, P.C. 139 Murraray Blvd. Hagåtña, Guam 96910 Phone: (671) 989-3009 Email: <a href="mailto:jdwalsh@rwtguam.com">jdwalsh@rwtguam.com</a>	<b>Phone:</b>	(671) 475-0390 x. 204
	<b>Mr. Steven Carrara, General Counsel</b> Interested Party PTI Pacifica Inc. dba IT&E 122 W. Harmon Industrial Park Rd Tamuning, Guam 96913 Phone: (671) 777-7252 Fax: (671) 646-4723 Email: <a href="mailto:Steven.Carrara@itehq.net">Steven.Carrara@itehq.net</a>	<b>Fax:</b>	(671) 472-7951

**Re:** OPA-PA-21-001 Decision and Order RE Purchasing Agency's Motion To Dismiss an Appeal for Lack of Jurisdiction

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 Jerrick Hernandez, Auditor  
[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)

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**BEFORE THE PUBLIC AUDITOR  
PROCUREMENT APPEALS  
TERRITORY OF GUAM**

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In the Appeal of ) **Appeal No: OPA-PA-21-001**  
Pacific Data Systems, Inc. (PDS), )  
Appellant. ) **DECISION AND ORDER RE**  
 ) **PURCHASING AGENCY'S**  
 ) **MOTION TO DISMISS AN APPEAL**  
 ) **FOR LACK OF JURISDICTION**

To: **Purchasing Agency:**  
Guam Housing and Urban Renewal Authority (GHURA)  
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**Appellant:**  
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**Interested Party:**  
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C/O Steven Carrara  
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1 **THIS MATTER** came before the Public Auditor on July 14, 2021, for a Motions Hearing  
2 including the Purchasing Agency GUAM HOUSING AND URBAN RENEWAL AUTHORITY's  
3 (Hereafter Referred to as "GHURA") Motion to Dismiss for Lack of Jurisdiction, filed in this matter  
4 on June 28, 2021. Appellant PACIFIC DATA SYSTEMS, INC. (Hereafter Referred to as "PDS")  
5 was represented by its Counsels of Record, Joshua D. Walsh, Esq. and Edwin J. Torres, Esq.  
6 GHURA was represented by its Counsel of Record, Anthony C. Perez, Esq. Interested Party PTI  
7 PACIFICA INC, dba IT&E (Hereafter Referred to as "IT&E") was represented by its Counsel of  
8 Record, Steven Carrara, Esq.  
9

### 10 **BACKGROUND**

11 On January 5, 2021, GHURA issued Invitation for Bid (IFB) GHURA-COCC-021-003, a  
12 procurement for Metrolan – Connectivity/Internet/Telecom Bundled Services. The original bid  
13 due date was January 29, 2021, but was initially extended to February 5, 2021 (Addendum No. 2)  
14 and then extended to February 12, 2021 (Addendum No. 5).  
15

16 On February 12, 2021, three bids were received from three offerors: (1) Docomo Pacific  
17 with a total bid amount of \$55,744.32, (2) PDS with a total bid amount of \$66,204, and (3) IT&E  
18 with a total bid amount of \$31,980.  
19

20 Also on February 12, 2021, PDS filed a Freedom of Information Act (FOIA) Request with  
21 GHURA requesting a copy of the bids submitted by Docomo and IT&E.

22 On February 18, 2021, PDS received a response from GHURA regarding their FOIA  
23 request.  
24

25 On February 22, 2021, PDS filed a letter with GHURA summarizing deficiencies they  
26 found related to IT&E's bid.  
27  
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1 On March 4, 2021, GHURA’s Board of Commissioners held a meeting where they  
2 awarded the IFB to IT&E.

3  
4 On March 12, 2021, GHURA issued a Notice of Non-Award to PDS.

5 On March 26, 2021, PDS filed is protest letter.

6 On May 5, 2021, GHURA issued a response letter denying PDS’s protest.

7 On May 19, 2021, PDS filed its appeal with the Office of Public Accountability (OPA).

8 **ANALYSIS**

9 In its Motion to Dismiss Appeal for Lack of Jurisdiction, GHURA argues that the OPA lacks  
10 jurisdiction to hear this appeal because PDS did not submit its protest within the fourteen (14) day  
11 limit of when they knew or should have known the issues, and therefore OPA should dismiss the  
12 appeal. GHURA cites the February 22, 2021 date, where PDS filed its letter pointing out the  
13 deficiencies in IT&E’s bid as being non-responsive of when PDS knew or should have known of  
14 the issues.  
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16 However, PDS argues that their protest centers on the selection of IT&E, which is when they  
17 received the Notice of Non-Award on March 12, 2021, and became an “aggrieved” party. PDS filed  
18 its protest on March 24, 2021, within fourteen days of receiving the March 12, 2021 Notice of Non-  
19 Award. PDS states that any earlier protest would have not been ripe.  
20

21 Under *DFS Guam L.P. v. The A.B. Won Pat International Airport Authority*, a party does  
22 not become “aggrieved” for purposes of a procurement protest “only when it loses the potential  
23 business, that is, when a bidder learns that it was not awarded a contract.” 2020 Guam 14 ¶ 85.  
24 Therefore, PDS did not need to receive the Notice of Non-Award to be considered an “aggrieved”  
25 party. PDS should have been able to file a protest “when alleged misconduct forms the basis of a  
26 procurement protest, the time runs from the date on which the protesting party first learned of the  
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1 purported misconduct.” *Id.* ¶ 89. A protest filed more than 14 days after the disappointed offeror or  
2 bidder had notice of the grounds for the protest is barred as untimely. This is true “even if no contract  
3 has yet been awarded, even if the protest was filed within 14 days of the agency’s selection of  
4 bidders or offerors, and even if the protestant did not subjectively understand or appreciate the  
5 ground of protest. *Id.* ¶ 87

7 In line with the Guam Supreme Court’s opinion, for this appeal to be properly before the  
8 Public Auditor, the Appellant PDS must have filed its protest no later than fourteen days after it  
9 became aware that IT&E’s bid had deficiencies and GHURA was still considering it for the award.  
10 At the bid opening on February 12, 2021, PDS was aware that IT&E had the lowest total bid amount  
11 and was in consideration of being awarded by GHURA. PDS then submitted a FOIA request for  
12 IT&E’s bid on the same day. After receiving IT&E’s bid on February 18, 2021, PDS wrote a letter  
13 to GHURA citing several deficiencies they found with IT&E’s bid on February 22, 2021, and  
14 therefore they knew of the “alleged misconduct forms the basis of a procurement protest”. Fourteen  
15 days after February 22, 2021, would have been March 8, 2021. However, PDS only filed its letter  
16 of protest on March 26, 2021, after it received its Notice of Non-award on March 12, 2021. The  
17 Public Auditor finds that PDS’ protest was therefore untimely.  
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## 21 CONCLUSION

22 Based on the foregoing, the Public Auditor hereby GRANTS GHURA’s Motion to Dismiss  
23 the Appeal for Lack of Jurisdiction. This appeal is now DISMISSED.

24 The other two motions filed, Motion to Compel Production of Documents in GHURA IFB  
25 GHURA-COCC-021-003 and Motion to Dismiss PDS’s Protest for Lack of Standing, are moot.  
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1 This is a Final Administrative Decision. The Parties are hereby informed of their right to  
2 appeal from a Decision by the OPA to the Superior Court of Guam, in accordance with Part D of  
3 Article 9, of 5 G.C.A. §5481(a) within fourteen (14) days after receipt of a Final Administrative  
4 Decision.  
5

6 A copy of this Decision shall be provided to the parties and their respective attorneys, in  
7 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website  
8 [www.opaguam.org](http://www.opaguam.org).  
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10 **SO ORDERED** this 16<sup>th</sup> day of July 2021 by:

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14 **Benjamin J.F. Cruz**  
15 **Public Auditor of Guam**  
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Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

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## OPA-PA-21-001 Decision and Order RE Purchasing Agency's Motion To Dismiss an Appeal for Lack of Jurisdiction

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

Fri, Jul 16, 2021 at 10:30 AM

To: John Day <john@pdsguam.com>, acp <acp@perezlawguam.com>, Ray Topasna <rstopasna@ghura.org>, Steven Carrara <steven.carrara@itehq.net>, "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Edwin J. Torres" <etorres@rwtguam.com>

Cc: Thyrza Bagana <tbagana@guamopa.com>

Hafa Adai,

Please see attached Decision and Order RE Purchasing Agency's Motion To Dismiss an Appeal for Lack of Jurisdiction for OPA-PA-21-001. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA

Auditor

Office of Public Accountability – Guam

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