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FILE NO OPA-PA: 14-007

1 **FISHER & ASSOCIATES**
2 Suite 101 De La Corte Building
3 167 East Marine Corp. Drive
4 Hagåtña, Guam 96910
5 Telephone: (671) 472-1131
6 Facsimile: (671) 472-2886

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8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**
9 **GOVERNMENT OF GUAM**

10 IN THE APPEAL OF :
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PACIFIC DATA SYSTEMS, INC.

Appellant.

CASE NO: OPA-PA 14-007

**GVB'S RESPONSE TO THE OPA'S
JULY 29, 2014 ORDER**

COMES NOW Guam Visitors Bureau ("GVB"), by and through undersigned counsel of record, and submits its Response to the Office of Public Accountability's July 29, 2014 Order to brief the below enumerated issues.

1. Whether or not GVB had jurisdiction to entertain PDS' protest in light of PDS' pending appeal in *In the Appeal of Pacific Data Systems, Inc.*, OPA-PA-14-003.

Appellant Pacific Data Systems, Inc. ("PDS") filed an appeal concerning Multi-Step Bid No. GVB 2014-002MS on April 16, 2014, under case number OPA-PA-14-003. PDS waived formal hearing on June 5, 2014. GVB's Motion to Dismiss OPA-PA-14-003 remains under advisement with the OPA.

On May 12, 2014, PDS submitted a second bid protest to the GVB, concerning the same procurement, which was rejected on June 10, 2014, as without merit and out of time. On June 25, 2014, PDS filed the second, instant appeal under case number OPA-PA-14-007.

GVB submits that there has been no prior determination on the issue of whether or not an agency has the jurisdiction to entertain a protest concerning a procurement which is the subject of an appeal pending before the OPA. Title 5 GCA § 5425(g) states that if a protest is timely filed, an agency

1 shall not proceed with the solicitation or award of a contract prior to final resolution of such protest.
2 The statute provides no guidance regarding additional protests filed during the pendency of an appeal.

3 PDS contends that the OPA's Decision and Order of September 28, 2012, in *In the Appeal of*
4 *Pacific Data Systems, Inc.*, OPA-PA-12-012 stands for the proposition that the pendency of an appeal to
5 the OPA does not preclude an agency from considering subsequent protests in the same procurement.
6 In said Decision, the OPA compelled General Services Agency ("GSA") to issue a decision on a
7 pending protest by PDS concerning IFB GSA-064-11. That same procurement was the subject of a
8 prior appeal filed by PDS under case number OPA-PA-12-011.

9 However, the OPA issued its Final Administrative Decision in OPA-PA-12-011 on September 5,
10 2012. The appeal concerning IFB GSA-064-11 was no longer pending on September 28, 2012, when
11 the OPA issued its Decision and Order in OPA-PA-12-012. This case is therefore distinguished.

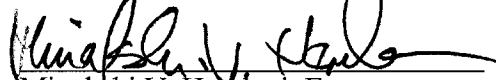
12 It is important to note that the arguments set forth in PDS' second protest are alleged to be
13 timely based on information provided in the Agency Report filed by GVB in OPA-PA-14-003, but
14 are merely detailed contentions of the same arguments PDS set forth in its first protest; both protests
15 contend that GVB did not conduct a proper analysis of the G4S bids. Instead of filing its further
16 arguments before the OPA in its pending appeal (OPA-PA-14-003), PDS attempted to restart the clock
17 on an untimely appeal by filing a subsequent protest with the GVB.
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19 **2. Whether or not PDS' instant appeal with timely filed.**

20 GVB references and incorporates herein the arguments set forth in its Motion to Dismiss OPA-
21 PA-14-003 filed May 13, 2014, and the arguments set forth in its Agency Statement filed in OPA-PA-
22 14-007 on July 10, 2014. As stated above, PDS attempted to restart the clock on an untimely appeal by
23 filing a second protest. GVB maintains that both protests in OPA-PA-14-003 and OPA-PA-14-007
24 are untimely and should be dismissed.
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26 Dated: August 6, 2014

FISHER & ASSOCIATES


Minakshi V. Hemlani, Esq.
Counsel for GVB