

1 **GUAM DEPARTMENT OF EDUCATION**  
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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 10/2/12

TIME: 12:10  AM  PM BY: ZL

FILE NO OPA-PA: 12-014

5 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

6 **PROTEST OF ARRA-RELATED PROCUREMENT**  
7 **GDOE IFB NO. IFB 014-2012**

8  
9 PACIFIC DATA SYSTEMS ("PDS")

OPA-PA-12-014

10 vs.

**OPPOSITION TO PDS' REQUEST FOR  
ENTRY OF STAY**

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12 DEPARTMENT OF EDUCATION,  
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15 This matter comes before the Office of Public Accountability ("OPA") on PDS' Request  
16 for Entry of Stay filed on September 28, 2012. The Guam Department of Education ("GDOE")  
17 requests that the Public Auditor deny PDS' Request for Entry of Stay. The subject of the protest  
18 is GDOE's Invitation for Bid ("IFB") 014-2012, which is partially funded through the American  
19 Recovery and Reinvestment Act ("ARRA"). As a result, this protest is governed pursuant to the  
20 expedited protest procedures at 5 GCA § 5425.1.

21 Under 5 GCA § 5425.1, "[t]he fact that a protest has been filed pursuant to this Section  
22 shall not stay the procurement process or award of any contract funded by ARRA moneys,  
23 whether in whole or in part, unless so ordered by the Public Auditor." 5 GCA § 5425.1(b).  
24 GDOE asserts that Public Auditor must not grant a stay in this matter for the same reasons the  
25 Public Auditor must ratify and affirm the award of the contract.

26 GDOE maintains it is in the best interest of Guam that a stay is not entered in this case.  
27 As stated in GDOE's Answer filed September 28, 2012, the Government of Guam is facing a  
28

1 critical financial shortfall. GDOE was fortunate to be awarded over \$2,000,000.00 of ARRA  
2 funds in order to fund the IFB. These ARRA funds must be obligated before September 30, 2012  
3 or these funds will expire. The issuance of the purchase orders met this requirement. GDOE's  
4 third party fiduciary, Alvarez & Marsal, has indicated that if any obligations are cancelled or  
5 modified or if any orders cannot be filled by September 30, 2012, such actions will result in the  
6 loss of these funds.

7 The cancellation and other modification, or even an issuance of a stay of this IFB could  
8 result in the loss of these funds. If a stay is issued, the interruption of delivery under the purchase  
9 orders would contribute to the loss of these funds. The loss of these funds would result in  
10 students and teachers deprived of important tools to facilitate and foster learning. The loss of  
11 these funds is not in the best interest of Guam. Therefore, the Public Auditor must find in the best  
12 interest of Guam and deny PDS' Request for Entry of Stay.

13  
14 Dated this 2<sup>nd</sup> day of October, 2012.

15 Respectfully submitted,

16 **GUAM DEPARTMENT OF EDUCATION**

17  
18 By: 

**ANDREW T. PEREZ, ESQ.**

*Legal Counsel*