



OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

**PROCUREMENT APPEALS**

IN THE APPEAL OF,

TELEGUAM HOLDINGS, L.L.C., *et.al.*

Appellant

) APPEAL NO: OPA-PA-13-016

) **DECISION & ORDER RE PURCHASING**  
) **AGENCY'S MOTION TO DISMISS FOR**  
) **LACK OF JURISDICTION**

To:

**Purchasing Agency:**

Department of Education, Government of Guam  
C/O Rebecca M. Perez, Esq., and Andrew T. Perez, Esq.  
P.O. Box DE  
Hagåtña, Guam, 96910  
Email: [legal-admin@gdoe.net](mailto:legal-admin@gdoe.net)

**Appellant:**

Teleguam Holdings, L.L.C., *et.al.*  
C/O Vincent C. Camacho, Esq.  
Carlsmith Ball, L.L.P.  
134 W. Soledad Ave.  
Bank of Hawaii Building, Suite 401  
Hagåtña, Guam, 96932-5027  
Email: [vcamacho@carlsmith.com](mailto:vcamacho@carlsmith.com)

**Interested Party:**

Pacific Data Systems  
C/O John Day, President  
185 Ilipog Drive  
HBC Building, Suite 204A  
Tamuning, Guam, 96913

**THIS MATTER**, came before the Office of Public Accountability on December 20, 2013 for a hearing on the GUAM DEPARTMENT OF EDUCATION's (GDOE) Motion to Dismiss for Lack of Jurisdiction. Daniel J. Tydingco, GUAM TELEPHONE AUTHORITY (GTA) Executive Vice President, Andrew S. Quenga, Esq., GTA General Counsel, were present

**Decision & Order - 1**

1 on behalf of the Appellant, and they were represented by their Counsel of Record, Vincent C.  
2 Camacho, Esq. Marcus Y. Pido, GUAM DEPARTMENT OF EDUCATION's (GDOE) Supply  
3 Management Administrator, was present on behalf of the Purchasing Agency, and he was  
4 represented by GDOE's Counsels of Record, Rebecca M. Perez, Esq., and Andrew T. Perez, Esq.  
5 John Day, President of PACIFIC DATA SYSTEMS (PDS) was present on behalf of PDS and  
6 appeared *Pro Se*. After hearing the arguments of the parties, the Public Auditor makes the  
7 following findings and orders:  
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10 1. The Public Auditor lacks jurisdiction to hear this matter. The Public Auditor has the  
11 power to review *de novo* any matter properly submitted to her. 5 G.C.A. §5703. Here,  
12 ostensibly, this matter came before the Public Auditor as GTA's Appeal of GDOE's Decision  
13 denying GTA's August 30, 2013 Protest concerning the award of Part 6 of GDOE-IFB-020-2011  
14 (GDOE E-rate Network (GENET) (Hereafter referred to as the "IFB")). The Public Auditor has  
15 the jurisdiction to review a purchasing agency's decision denying a protest concerning the  
16 method of source selection, solicitation, or award of a contract. 5 G.C.A. §5425(e). However,  
17 the Public Auditor finds that GTA's August 30, 2013 protest and this appeal concern PDS'  
18 performance of its contract with GDOE for Part 6 of the IFB instead of GDOE's method of  
19 source selection, solicitation, or its award of the contract to PDS. There is no dispute that GDOE  
20 awarded PDS Part 6 of the IFB on or about March 23, 2011. GTA readily admits that it is not  
21 protesting this award.<sup>1</sup> Instead, GTA's August 30, 2013 protest and this appeal solely involve  
22 the issue of whether PDS properly performed its obligations under Part 6 of the IFB, and the  
23 subsequent GDOE Purchase Orders issued to PDS arising from the IFB, from March 23, 2011 to  
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<sup>1</sup> Page 4, GTA's Notice of Appeal filed on November 19, 2013.

1 July 1, 2011.<sup>2</sup> GTA cites PDS' performance during this period to argue that GDOE failed to  
2 determine whether PDS was a responsible bidder, that GDOE allowed PDS to provide temporary  
3 services outside of the scope of the IFB, that GDOE failed to cancel the purchase orders, that  
4 GDOE and PDS violated the payment terms set forth in the IFB, and that GDOE failed to assess  
5 liquidated damages for PDS' alleged non-performance.<sup>3</sup> The Public Auditor finds that these  
6 issues are all inextricably linked to or concern how PDS performed its contract with GDOE post  
7 award, instead of GDOE's method of source selection, solicitation, or award of Part 6 of the IFB  
8 to PDS. Therefore, all of the issues raised in GTA's Protest and this appeal are not properly  
9 before the Public Auditor and the Public Auditor lacks jurisdiction to hear them.  
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12 2. GTA's argument that GDOE should be estopped from alleging that the OPA lacks  
13 jurisdiction has no merit. GTA relies on GDOE's November 5, 2013 decision denying GTA's  
14 protest wherein GDOE informed GTA of its right to appeal GDOE's decision to argue that  
15 GDOE should be estopped from alleging that the Public Auditor lacks jurisdiction to hear this  
16 appeal. Whenever a purchasing agency denies a protest, it is required to give the protestor notice  
17 of the protestor's right to appeal the purchasing agency's decision. 5 G.C.A. §5425(c)(2).  
18 However, after such a decision is appealed to the Public Auditor, any objection or motion  
19 addressed to the jurisdiction of the Public Auditor shall be promptly filed and, if no such  
20 objection or motion is filed, the Public Auditor still has the right to raise the issue of her  
21 jurisdiction to proceed with an appeal *sua sponte*. 2 G.A.R. Div. 4, Chap. 12, §12104(c)(9).  
22 Here, GTA filed this appeal on November 19, 2013 and GDOE promptly filed its Motion to  
23 Dismiss the Appeal for Lack of Jurisdiction just a week later on November 26, 2013. Thus, 5  
24 G.C.A. §5425(c)(2)'s requirement that GDOE inform GTA of its right to administrative and  
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<sup>2</sup> Id.

<sup>3</sup> Pages 4, 5, 7, 8, and 9, Id.

1 judicial review does not bar GDOE from making a motion for lack of jurisdiction in this appeal  
2 pursuant to 2 G.A.R. Div. 4, Chap. 12, §12104(c)(9).

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4 3. *In the Appeal of Town House Department Stores Inc., dba Island Business Systems*  
5 *& Supplies*, OPA-PA-11-002 (Office of Public Accountability) is distinguishable from this  
6 matter. GTA cites the Decision in OPA-PA-11-002 to argue that the Public Auditor should  
7 exercise her jurisdiction in this matter.<sup>4</sup> In OPA-PA-11-002, the Public Auditor found that an  
8 award, expressed in a purchase order, had improperly increased the quantities required by an  
9 IFB. Here, this appeal concerns a very different issue because GTA is alleging that PDS could  
10 not perform to the IFB's specifications and that the allegedly non-conforming services PDS did  
11 provide were temporary services that were outside of the scope of the IFB.<sup>5</sup> This issue concerns  
12 whether PDS breached its contract with GDOE and is not properly before the Public Auditor  
13 because such issue does not concern GDOE's method of source selection, solicitation, or award  
14 of the IFB's contract.  
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17 4. The Public Auditor has no jurisdiction to debar PDS. GTA argues that the Public  
18 Auditor can review GDOE's decision not to institute debarment proceedings against PDS.  
19 However, Guam's Procurement Law prohibits this. The Public Auditor is limited to deciding  
20 whether, or the extent to which a **debarment** was in accordance with the statutes, regulations, in  
21 the best interests of the government, and was fair (Bold Emphasis Added). 5 G.C.A. §5705(c).  
22 Here, GDOE did not debar PDS. Thus, the Public Auditor lacks jurisdiction to review whether  
23 GDOE properly choose not to debar PDS.  
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25 5. GDOE must vigorously pursue its eligibility to receive federal reimbursements for a  
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28 <sup>4</sup> Page 4, GTA's Opposition to GDOE's Motion to Dismiss filed on December 17,  
2013.

<sup>5</sup> Id., at page 5.

1 percentage of its Wide Area Network (WAN) Services costs. The Public Auditor finds that  
2 GDOE was eligible to receive the aforementioned federal funds for fiscal years 2011 thru 2013,  
3 that GDOE applied for the federal funding, and that GDOE has not yet received said funds.  
4 GDOE is hereby admonished for failing to take all actions necessary to secure these federal  
5 reimbursements. GDOE is reminded that these actions can include replacing its current WAN  
6 Services provider if such contractor is failing to provide services that meet the eligibility criteria  
7 for the federal reimbursements as alleged by GTA. What is clear in this matter is that GDOE did  
8 not receive federal reimbursements for a three year period which forced it to use its scant  
9 budgeted funds to cover the full costs of the WAN Services it was receiving. Further, it appears  
10 from the record in this matter, that GDOE merely applied for the federal reimbursements once  
11 per year, and after their application was denied, it appears GDOE did nothing more than submit  
12 an application in the next year that was also denied. GDOE must take all remedial actions  
13 necessary to receive these funds in the hope that it can receive its federal reimbursements for  
14 2011 thru 2013, and to ensure its WAN Services meet all eligibility requirements for any future  
15 federal reimbursements that GDOE may be entitled to. The staff, faculty, and students of the  
16 Guam Public School System and the Guam Taxpayers who fund it deserve no less.

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21 6. Based on the foregoing, GDOE's Motion to Dismiss for Lack of Jurisdiction is  
22 hereby GRANTED. Accordingly this matter is DISMISSED with prejudice because the Public  
23 Auditor does not have the jurisdiction to proceed with this appeal.

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25 7. This is a Final Administrative Decision. The Parties are hereby informed of their  
26 right to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in  
27 accordance with Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final  
28 Administrative Decision. 5 G.C.A. §5481(a).

8. A copy of this Decision & Order shall be provided to the parties and their respective

1 attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on the  
2 OPA Website [www.guamopa.org](http://www.guamopa.org).

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4 **SO ORDERED** this 7<sup>th</sup> day of January, 2014 by:

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9 DORIS FLORES BROOKS, CPA, CGFM  
10 PUBLIC AUDITOR  
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