



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

**PROCUREMENT APPEALS**

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6 IN THE APPEAL OF, )  
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8 PACIFIC DATA SYSTEMS, INC., )  
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Appellant

**APPEAL NO: OPA-PA-15-007**  
**DECISION AND ORDER RE PRE-HEARING MOTIONS**

To: **Purchasing Agency:**  
Guam Power Authority  
C/O D. Graham Botha, Esq.  
P.O. Box 2977  
Hagåtña, Guam, 96932  
Facsimile: (671) 648-3290

**Appellant:**  
Pacific Data Systems, Inc.  
C/O Bill R. Mann, Esq.  
Berman O'Conner & Mann  
Suite 503, Bank of Guam Bldg.  
111 Chalan Santo Papa  
Hagåtña, Guam, 96910  
Facsimile: (671) 477-4366

**Interested Party:**  
DOCOMO Pacific, Inc.  
C/O Jennifer Calvo-Quitugua, Esq.  
Calvo Fisher & Jacob L.L.P.  
259 Martyr Street, Suite 100  
Hagåtña, Guam, 96910

**THIS MATTER** came before the Hearing Officer on June 30, 2015 for a Motion Hearing. John Day was present on behalf of Appellant and was represented by Appellant's Counsel of Record, Bill R. Mann, Esq. Jesse Reyes was present on behalf of the Purchasing Agency (Hereafter Referred to as "GPA") and was represented by the GPA's counsel of record,

1 Graham Botha, Esq. Interested Party DOCOMO Pacific, Inc. (Hereafter Referred to as  
2 DOCOMO), was represented by their counsel of record, Genevieve P. Rapadas, Esq. After  
3 hearing the arguments of the parties and for good cause shown, the Hearing Officer hereby  
4 FINDS and ORDERS the following:

5 1. GPA's June 5, 2015 Motion to Dismiss is hereby DENIED. GPA alleges that PDS  
6 filed this appeal after the filing deadline expired. A purchasing agency's decision denying a  
7 protest may be appealed by the protestor to the Public Auditor within fifteen (15) days after the  
8 protestor receives the purchasing agency's notice of decision. 5 G.C.A. §5425(e). Here, on May  
9 14, 2015 PDS received GPA's Decision denying PDS' November 24, 2014 Protest.<sup>1</sup> PDS filed  
10 this appeal on May 29, 2015.<sup>2</sup> The Hearing Officer finds that PDS filed its appeal on the fifteen  
11 (15) days after it received GPA's decision and this is within the filing period established by 5  
12 G.C.A. §5425(e).

13 GPA asserts that PDS had only fourteen (14) days to file this appeal. Generally, the  
14 Superior Court of Guam shall have jurisdiction over an action between the Government of Guam  
15 and a bidder, offeror, or contractor to determine whether a solicitation or an award of a contract  
16 is in accordance with the statutes, regulations and the terms and conditions of the solicitation and  
17 such action shall be initiated within fourteen (14) days after receipt of a final administrative  
18 decision. 5 G.C.A. §5481(a) and 2 G.A.R., Div. 4, Chap. 9, §9109(1)(b). The term "action" as  
19 used in both the aforementioned statutes and regulation, means a civil action. *Town House*  
20 *Department Stores, Inc., dba Island Business Systems and Supplies v. Department of Education,*  
21 *Government of Guam, et.al.*, 2012 Guam 25, ¶28 (Supreme Court of Guam). Hence, GPA's  
22 reliance on the fourteen (14) day time limit to file an action is misplaced because that time limit  
23 only applies to the filing of civil actions in the Superior Court of Guam. Here, as explained  
24 above, only the fifteen (15) day time limit applies to the filing of PDS' appeal to the Public  
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26 <sup>1</sup> GPA's Denial of Procurement Protest dated May 11, 2015, Exhibit A, GPA's  
27 Motion to Dismiss filed on June 5, 2015. NOTE: The actual date on this  
28 document is May 11, 2014, however, the Hearing Officer finds that this is a  
type because the email transmitting the document to the OPA indicate that the  
document was prepared in May, 2015.

<sup>2</sup> Notice of Appeal filed on May 29, 2015, Exhibit B, Id.

1 Auditor. Under the Procurement Law, a bidder may file a protest to the Chief Procurement  
2 Officer, or, if the agency is exempted from other portions of the centralized procurement regime,  
3 the director of the exempted agency, and if the protest is not resolved to the party's satisfaction,  
4 the party may appeal to the Public Auditor, and Article 12 of Guam's Procurement Law provides  
5 for an appeal of the Public Auditor's decision to the Superior Court of Guam as provided in 5  
6 G.C.A. §5480. Id., at ¶21. Here, the Public Auditor has yet to render her decision on PDS'  
7 appeal. Thus, the Hearing Officer finds that the fourteen (14) day time limit for PDS to appeal  
8 the Public Auditor's decision to the Superior Court of Guam set forth in 5 G.C.A. §5481(a) and 2  
9 G.A.R., Div. 4, Chap. 9, §9109(1)(b) is inapplicable to PDS' appeal of GPA's decision denying  
10 PDS' procurement protest to the Public Auditor.


11 2. GPA's June 5, 2015 Request to submit the Procurement Record it filed in *In the*  
12 *Appeal of Pacific Data Systems*, OPA-PA-14-013 (Guam Office of Public Accountability), as the  
13 Procurement Record in this matter is GRANTED. After reviewing the OPA's Record in OPA-  
14 PA-14-013, the Hearing Officer finds that the solicitation in that appeal was Multi-Step GPA-  
15 IFB-072-14 (Voice & Data Services) (Hereafter referred to as "IFB") which is the same IFB at  
16 issue in this matter.<sup>3</sup> However, the Hearing Officer finds that the Procurement Record  
17 concerning said IFB was filed in OPA-PA-14-013 on December 18, 2014 and was almost six (6)  
18 months old at the time GPA filed its request in this matter. GPA is hereby ORDERED to update  
19 said procurement record with any additional documents accrued during the period starting from  
20 December 18, 2014 to July 10, 2015 and file the supplemented procurement record no later than  
21 5:00 p.m., on July 10, 2015. Further, GPA should not include any of the procedural documents  
22 that have accrued in said record arising from OPA-PA-14-013 and from *In the Appeal of Pacific*  
23 *Data Systems*, OPA-PA-15-005 (Guam Office of Public Accountability). PDS and DOCOMO  
24 both state that they already have those document because they were both parties in those appeals.  
25 Finally, the Procurement Record that GPA is required to file in this matter by July 10, 2015 shall  
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28 <sup>3</sup> Part III(B), Page 1, Notice of Appeal filed in this matter on May 29, 2015.

1 contain the Certification of Record required by 5 G.C.A. §5250 and this certification must be  
2 part of said record.

3 3. PDS' June 24, 2015 request that the Office of Public Accountability (Hereafter  
4 Referred to as "OPA") find in favor of PDS on the grounds that GPA failed to file a timely  
5 Agency Report is hereby DENIED. A Purchasing Agency is required to file an Agency Report  
6 within ten (10) working days after it receives an Appellant's notice of appeal. 2 G.A.R., Div. 4,  
7 Chap. 12, §12104(c)(3). The Agency Report is an important document because it is the  
8 Purchasing Agency's answer to the appeal. Id. Here, on or about June 1, 2015 GPA received  
9 PDS' Notice of Appeal.<sup>4</sup> On or about June 15, 2015 GPA's deadline to file its Agency Report  
10 expired and no such report was filed by GPA. The Hearing Officer finds that an expeditious  
11 resolution of this matter requires GPA to state its position with respect to the issues raised in  
12 PDS' appeal and allow the other parties to comment on GPA's position. Accordingly, GPA is  
13 hereby ORDERED to file its Agency Report no later than 5:00 p.m. on July 15, 2015, and the  
14 other parties shall file their comments on GPA's Agency Report, if any, no later than July 27,  
15 2015 at 5:00 p.m. GPA shall file its rebuttal, if any, to the other parties' comments no later than  
16 August 3, 2015 at 5:00 p.m.

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18 **SO ORDERED *NUNC PRO TUNC*** as of June 30, 2015, this 30<sup>th</sup> day of July, 2015 by:

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23 ANTHONY R. CAMACHO, ESQ.  
24 Hearing Officer  
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<sup>4</sup> Notice of Receipt of Appeal filed on June 1, 2015.