

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Mr. Jermaine Alerta Executive Director Guam Legislature Guam Congress Building 163 Chalan Santo Papa Hagatna, Guam 9610	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Email:	(671) 472-2461 alerta.jermaine@gmail.com	Pages:	7 (including cover page)
		Date:	March 21, 2017
		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951
CC:	Mr. John Day President Pacific Data Systems, Inc. (PDS) Appellant		
Phone: Fax:	(671) 300-0202 (671) 300-0265		

Re: OPA-PA-17-005 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,

Jerrick Hernandez

Auditor

jhernandez@guamopa.com

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

March 21, 2017

Jermaine Alerta
Executive Director
Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagata, Guam 9610

VIA EMAIL: alerta.jermaine@gmail.com

Re: Notice of Receipt of Appeal – OPA-PA-17-005

Dear Mr. Alerta,

Please be advised that Pacific Data Systems, Inc. (PDS) filed an appeal with the Office of Public Accountability (OPA) on March 20, 2017 regarding the Guam Legislature's (Legislature) response to PDS' protest relative to Invitation for Bid No.: GL-01-FY2017; a procurement solicitation for a 60 month lease of Telephone System and Telecommunications Services for the 34th Guam Legislature new building. OPA has assigned this appeal case number OPA-PA-17-005.

Immediate action is required of GCC pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at www.opaguam.org. The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Tuesday, March 28, 2017**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Tuesday, April 4, 2017**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to PDS. In addition, OPA respectfully asks that the Legislature provide one original and two copies of the procurement record and agency report as the Guam Procurement Law and Regulations require only one copy. The three copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208, or jhernandez@guamopa.com, should you have any questions regarding this notice.

Sincerely,



Yuka Hechanova
Deputy Public Auditor

Enclosure: First Four Pages of Notice of Appeal – OPA-PA-17-005

Cc: John Day, President of PDS



RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 03.20.17

TIME: 4:05 AM PM BY: M

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL FILE NO OPA-PA: 17.005

PART I- To be completed by OPA

In the Appeal of)

) **NOTICE OF APPEAL**

Pacific Data Systems, Inc (PDS))

(Name of Company), APPELLANT)

) Docket No. OPA-PA 17.005

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PART II- Appellant Information

Name: Pacific Data Systems, Inc (PDS)

Mailing Address: 185 Ilipog Drive, Suite 204A

Tamuning, GU 96913

Business Address: same as above

Email Address: John@pdsguam.com

Daytime Contact No: 671-300-0202

Fax No.: 671-300-0265
.....

PART III- Appeal Information

A) Purchasing Agency: 34th Guam Legislature (GL)

B) Identification/Number of Procurement, Solicitation, or Contract: GL-01-FY17

C) Decision being appealed was made on April 1, 2014 (date) by:
X GL Chief Procurement Officer _ Director of Public Works _ Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

D) Appeal is made from:

(Please select one and attach a copy of the Decision to this form)

X Decision on Protest of Method, Solicitation or Award

___ Decision on Debarment or Suspension

___ Decision on Contract or Breach of Contract Controversy

(Excluding claims of money owed to or by the government)

___ Determination on Award not Stayed Pending Protest or Appeal

(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

- TeleGuam Holdings, LLC
 - Docomo Pacific, Inc
-
-

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

PART IV- FORM AND FILING

This is a Procurement Appeal by Pacific Data Systems, Inc. (“PDS”) of the protest decision rendered by 34th Guam Legislature (GL) on March 3, 2017 (attached as Exhibit A) regarding a Protest made by PDS related to compliance with law and regulation issues for the above referenced procurement (GL-01-FY17), a procurement for a 60 month lease of Telephone System and Telecommunications Services for the 34th Guam Legislature new building.

The original Protest in this matter was made by PDS to GVB on February 24, 2017 (attached as Exhibit B). To the best of PDS’ knowledge no formal award has been issued by GL in this procurement, though GL **did not STAY** the bid after the PDS protest and **did proceed with a bid opening** (PDS did not turn in a bid since the procurement should have been stayed and the bid opening should not have been conducted) shortly after the PDS protest was received. PDS did issue a subsequent Protest of the continuation of the procurement after the PDS Protest of February 24, 2017 (see Exhibit C). No decision has been issued by the GL regarding this second protest.

IV.1 PDS GROUNDS FOR APPEAL:

A. THE GUAM LEGISLATURE REJECTION OF THE PDS PROTEST IS IN ERROR. THE GUAM LEGISLATURE STATED THE BID WOULD BE CONDUCTED IN ACCORDANCE WITH THE GUAM PROCUREMENT ACT AND GUAM PROCUREMENT REGULATIONS.

The stated basis by the GL for the rejection of the PDS Protest is the that the laws and regulations referenced by PDS in its protest were not applicable to procurements issued by the GL. PDS understands the potential limitations of applying the Guam Procurement Act and Guam Procurement Regulations to procurements issued by the Guam Legislature. However, based on the decisions made by the GL in the formulation and issuance of this procurement, these limitations do not apply in this case and GL made an error in dismissing the PDS Protest for this reason.

When GL issued this procurement it did so under the expressed authority of the Guam Procurement Act and Guam Procurement Regulations. See the attached Exhibit D that shows the highlighted sections of the bid that provide instructions and guidance to bidders regarding how the bid is to be conducted and what authority is being used. Specifically, page 19 of 26 of the bid titled GENERAL TERMS AND CONDITIONS at 1 states as follows:

1. ***AUTHORITY:*** *This solicitation is issued subject to all the provision of the Guam Procurement Act (5GCA, Chapter5) and the Guam Procurement Regulations (copies of both are available at the Office of the Compiler of Laws, Department of Law, copies available for inspection at General Services Agency). It requires all parties involved in the Preparation, negotiation, performance, or administration of contracts to act in good faith.*

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

Page 1 of 26 of this same Exhibit D shows that the bid was signed and issued by duly authorized contracting officers for the 34th Guam Legislature. Thus, there can be no doubt as to the applicability of the Guam Procurement Act and Guam Procurement Regulations to this solicitation.

B. THE GUAM LEGISLATURE HAS VIOLATED THE GUAM PROCUREMENT LAW AND GUAM PROCUREMENT REGULATIONS FOR FAILING TO FORMALLY AMEND THE BID TO REFLECT REVISED SPECIFICATIONS AND REQUIREMENTS TO CONFORM WITH THE APPLICABLE LAW AND REGULATION.

As noted in the original PDS protest of February 24, 2017 (reference Exhibit B), PDS requested on February 14, 2017 that the GL formally amend the bid to incorporate required modifications to properly conform to procurement law and regulation; specifically 2GAR §3121(e). GL never issued these amendments and as a result it was PDS' determination that the existing bid specifications and bid form were ambiguous, and could not lead to a proper evaluation, determination, and award.

The situation with this procurement (GL-01-FY2017) is similar in circumstances to procurement issued by Guam Visitors Bureau (GVB) for a CCTV Surveillance System (reference GVB-2014-002MS). Due to issues in the GVB procurement the protest by PDS was appealed to the OPA who decided that GVB had failed to provide bidders with clear specifications and instructions in the procurement and as a result the bid requirements were ambiguous and the award in the procurement was set aside by the OPA with instructions to GVB to resolve the procurement issues in a new bid (reference OPA-PA-14-007).

In the case with this procurement with GL, PDS was acting in good faith to point out the procurement issues to GL and suggest amendments to resolve these issues in order to allow a valid procurement to be conducted that would result in a sustainable award.

IV.2 RULING REQUESTED BY THE OPA IN THIS APPEAL:

- A. PDS seeks a *de novo* review of the procurement documents and any determinations made by GL in this procurement. Specifically, PDS requests that the OPA validate the procurement process being used by GL and the applicability of the Guam Procurement Act and Guam Procurement Regulations. If the OPA finds that the GL is bound by this law and regulations, PDS requests that the OPA instruct GL to address the compliance issues raised by PDS and bring the procurement into compliance with the law and regulation.
- B. PDS requests a ruling by the OPA on each of the appeal points contained in this procurement appeal.
- C. PDS requests reimbursement of any and all applicable costs as may be determined by the OPA in this matter.

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

- D. That GL be ordered to STAY all activity related to this procurement during the pendency of this appeal or any pending protests accordance with applicable law.

IV.3 SUMMARY OF SUPPORTING EXHIBITS ATTACHED HERETO:

Exhibit A – Guam Legislature Denial of PDS Protest dated March 3, 2017

Exhibit B – PDS Protest Letter dated February 24, 2017

Exhibit C – PDS Protest Letter of March 3, 2017

Exhibit D – High-lighted Bid Documents (pages 1, 2, 19-24)

PART V – DECLARATION REGARDING COURT ACTION

The undersigned party does hereby confirm that to the best of his knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 20th day of March, 2017.

By: _____



APPELLANT – Pacific Data Systems
by John Day, its President

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FAX

To:	Mr. Jermaine Alerta Executive Director Guam Legislature Guam Congress Building 163 Chalan Santo Papa Hagatna, Guam 9610	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone:	(671) 472-2461	Pages:	7 (including cover page)
Email:	alerta.jermaine@gmail.com	Date:	March 21, 2017
		Phone:	(671) 475-0390 x. 208
		Fax:	(671) 472-7951
CC:	Mr. John Day President Pacific Data Systems, Inc. (PDS) Appellant		
Phone:	(671) 300-0202		
Fax:	(671) 300-0265		

Re: OPA-PA-17-005 Notice of Receipt of Appeal

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Thank you,
 Jerrick Hernandez
 Auditor
jhernandez@guamopa.com

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Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	CP: Completed	TS: Terminated by system
HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TU: Terminated by user	EC: Error Correct



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-17-005 Notice of Receipt of Appeal

1 message

Jerrick Hernandez <jhernandez@guamopa.com>
To: alerta.jermaine@gmail.com

Tue, Mar 21, 2017 at 12:00 PM

Hafa Adai Mr. Alerta,

See attached Notice of Receipt of Appeal for OPA-PA-17-005 (PDS vs. Guam Legislature). Please confirm receipt of this email and the attachment by re-sending the cover page along with your agency's receipt stamp, date, and initials of receiver.

—

Regards,

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


Auditor

Guam Office of Public Accountability

Tel. (671) 475-0390 ext. 208

Fax. (671) 472-7951

www.opaguam.org

 **OPA-PA-17-005 Notice of Receipt of Appeal.pdf**
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