

1 **BERMAN O'CONNOR & MANN**
Suite 503, Bank of Guam Bldg.
2 111 Chalan Santo Papa
Hagåtña, Guam 96910
3 Telephone No.: (671) 477-2778
Facsimile No.: (671) 477-4366

4 Attorneys for:
5 *PACIFIC DATA SYSTEMS, INC.*

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 09/10/14

TIME: 11:15 DAM 2 PM BY: U

FILE NO OPA-PA: 12-018

6
7 **OFFICE OF PUBLIC ACCOUNTABILITY**
8 **PROCUREMENT APPEALS**

9 IN THE APPEAL OF
10 **TELEGUAM HOLDINGS LLC and its**
11 **WHOLLY OWNED SUBSIDIARIES,**
GTA TELECOM LLC; GTA SERVICES
LLC and PULSE MOBILE LLC,

12 Appellants.

OPA Docket No. OPA PA 12-018

REPLY OF PACIFIC DATA SYSTEMS,
INC. TO GSA'S MOTION TO DECLINE

13
14 **I. INTRODUCTION**

15 By Decision and Order dated August 8, 2014, the Hon. Arthur Barcinas
16 vacated the Public Auditor's Decision in OPA-PA-12-018, and ordered the Public
17 Auditor to issue a new Decision. On August 22, 2014, Pacific Data Systems, Inc.
18 ("PDS") filed its Request that the Public Auditor hold a Scheduling Conference at its
19 earliest convenience pursuant to the Superior Court's Decision and Order. The General
20 Services Agency ("GSA") has opposed PDS' request for a Scheduling Conference, and
21 requested the Public Auditor to decline further action in this matter.

22 **II. ARGUMENT**

23 GSA claims that this appeal may not proceed because of a pending
24 judicial proceeding. However, 2 GAR Div. 4 § 12103(b) provides:

25 (b) Effect of Judicial Proceedings. If an action
26 concerning the procurement under Appeal has
27 commenced in court, the Public Auditor shall not act
28 on the Appeal except to notify the parties and decline
the matter due to Judicial involvement. This Section

1
2 shall not apply where a court requests the decision of
3 the Public Auditor ... (emphasis added)

4 In its Request for a Scheduling Conference, PDS attached a copy of Judge
5 Barcinas' Decision and Order. On p. 27 of that Decision and Order, the Court stated
6 "... The Public Auditor is hereby ORDERED to issue a new Decision, not inconsistent
7 with this Decision and Order, in light of the new evidence. The trial date set for
8 August 18, 2014 is hereby VACATED. This Court's jurisdiction is hereby STAYED
9 during the pendency of the renewed proceeding before the Public Auditor ..."

10 GSA points to an appeal now pending in the Supreme Court relating to a
11 different part of this ten part procurement, and states the Supreme Court has not
12 requested the Public Auditor to make a decision regarding that case. That is true, but
13 does not change the fact that the Superior Court ordered the Public Auditor to make a
14 new Decision in OPA-PA 12-018. It is submitted that no one within the jurisdiction of
15 the Superior Court may prudently ignore an Order from the Superior Court.

16 Oral argument in the Supreme Court appeal has now been set for October
17 22, 2014. See attached Notice. It may be anticipated that at least six months will elapse
18 between now and a final resolution of the Supreme Court appeal.¹ On p. 21 of his
19 Decision and Order, Judge Barcinas recognized that additional delay would be
20 detrimental to the public policy interest in expeditious resolution of procurement
21 disputes. There can be no doubt that the installation of the GGWAN system as soon as
22 possible will be beneficial to the Government, and implementation of this part of the
23 procurement has already been long delayed. Judge Barcinas is awaiting the Public
24 Auditor's Decision, and freezing this matter as requested by GSA would be inconsistent
25 both with Judge Barcinas' Decision and Order and the public interest in the expeditious
26 resolution of this matter.

27

¹ The Supreme Court appeal relates to a different part of this procurement, and is solely limited to the
28 issue of whether the trial court per Judge Sukola erred in requiring GTA to post a bond in a different civil
 action, CV0333-13. The Supreme Court decision thus can have no effect on the outcome of this matter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. CONCLUSION

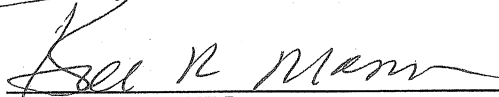
PDS notes that 30 days has already passed since Judge Barcinas remanded this matter. PDS requests that the Public Auditor expeditiously rule that 2 GAR Div. 4 § 12103(b) is not applicable given the Superior Court Order requiring a new Decision from the Public Auditor in OPA-PA 12-018, and set a Scheduling Conference at its earliest convenience in order to comply with Judge Barcinas' Order.

DATED this 10th day of September, 2014.

Respectfully submitted,

BERMAN O'CONNOR & MANN
Attorneys for *PACIFIC DATA SYSTEMS, INC.*

By:


BILL R. MANN

BERMAN O'CONNOR & MANN
RECEIVED

FILED

SEP 09 2014

2014 SEP -8 PM 4: 21

Time: N/A
By: [Signature]

IN THE SUPREME COURT OF GUAM

SUPREME COURT
OF GUAM

TELEGUAM HOLDINGS LLC and ITS)
Wholly Owned Subsidiaries)

Plaintiff-Appellant.

vs.

TERRITORY OF GUAM,
Department of Administration,
General Services Agency, The Office
of Public Accountability, Pacific Data
Systems, Inc.,

Defendants-Appellees

Supreme Court Case No. CVA14-012
Superior Court Case No. CVA0333-13


NOTICE OF ORAL ARGUMENT/
STATUS AND DISQUALIFICATION
HEARING

TO: Elyze M. Iriarte Fred Nishihira Bill R. Mann Anthony Camacho
via court box#17 via court box#80 via court box#7 via court box #63

Please take notice that oral argument for the above-captioned matter is scheduled to be heard on **Wednesday, October 22, 2014 at 10:00 a.m., Northern Court Satellite**, before the panel of Chief Justice Robert J. Torres, Associate Justice F. Philip Carbullido and Associate Justice Katherine A. Maraman.

A status and disqualification hearing will be conducted at **9:00 a.m. on Monday, September 15, 2014**, in the Monessa G. Lujan Appellate Courtroom. Any questions regarding the disqualification of any justice, the scheduling of a particular hearing, the duration of arguments, and other administrative matters may be addressed at the hearing.

Dated this 8th day of September, 2014.


Hannah Gutierrez Arroyo
Clerk of Court