



FAX

To: **Mr. Marcus Pido**
Supply Management Administrator
Guam Department of Education

From: **Doris Flores Brooks, CPA, CGFM**
Public Auditor
OPA Procurement Appeals
Suite 401 DNA Bldg.
238 Archbishop Flores St.
Hagatna, Guam 96910

Agency: **Guam Department of Education**

Pages 6 (including cover page)

CC: John Day, President
Bill R. Mann, Attorney for PDS
Pacific Data Systems

Date: October 3, 2012

Rebecca M. Perez, Esq., Legal Counsel
Andrew T. Perez, Esq., Legal Counsel
Guam Department of Education

All Media

Fax: PDS: 300-0265/477-2778
GDOE: 472-5001

Point of Contact
Nos. **Tel: 475-0390 x 210**
(Vince Duenas)
Fax: 472-7951

Re: **Scheduling Order - OPA-PA-12-014**

Urgent For Review Please Comment Please Reply Please Recycle

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Vince Duenas – vduenas@guamopa.org

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BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS

In re the
PROTEST OF
PACIFIC DATA SYSTEMS, INC.,
Protestant.

OPA Docket OPA PA 12-014
SCHEDULING ORDER

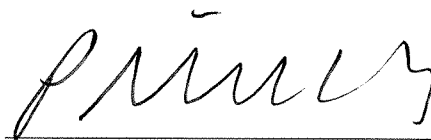
Peter C. Perez, Esq., duly appointed by the Public Auditor as the Hearing Officer in the above-captioned matter and acting pursuant to powers granted to the Public Auditor by Public Law 31-196, § 8, codified as 5 G.C.A. § 5425A, relevant to protests of Department of Education (DOE) actions pertaining to the expenditure of funds allocated to DOE for “Capital Improvement Projects and air conditioning repair and maintenance,” hereby orders:

1. A hearing shall be had before the Public Auditor at 3:00 p.m., Monday, October 8, 2012, at Room 907, DNA Building, 238 Archbishop Flores Street, Hagatna, Guam 96910, for Pacific Data Systems, Inc. (PDS), and the Department of Education to address questions relative to DOE's issuance of purchase orders to Softchoice in response to DOE's Invitation for Bid (IFB) 014-2012 for the purchase of an indefinite quantity of laptops, mobile computer labs, laptops with docking stations and desktop computers. *See* DOE's Answer filed September 28, 2012, and DOE's Notice of Bid Status and Intent to Award dated September 20, 2012, Exhibit 1 to PDS protest.
2. Softchoice and Compacific, as interested parties, may appear through their representatives and shall be heard as the Hearing Officer may deem appropriate.
3. On or before 10:00 a.m., Monday, October 8, 2012, DOE shall submit to the Public Auditor written evidence to support the statement in its Opposition to PDS' Request for

1 Entry of Stay that “if any obligations are cancelled or modified or if any orders cannot be
2 filled by September 30, 2012, such actions will result in the loss of these funds.” In
3 responding to this paragraph, DOE’s attention is directed to the letter of September 25,
4 2012, from the U.S. Department of Education to the Governor of Guam, a copy of which
5 is attached hereto as Exhibit A.

- 6 4. On or before 10 a.m., Monday, October 8, 2012, DOE, PDS, Softchoice and Compacific
7 are invited to submit to the Public Auditor any additional materials which they believe
8 may assist the Public Auditor in reaching an expedited decision in this matter as required
9 by 5 G.C.A. § 5425A. The Public Auditor specifically requests the parties, including the
10 interested parties, to assess whether DOE IFB 014-2012 is for a “capital improvement
11 project,” noting that the Public Auditor’s jurisdiction under 5 G.C.A. § 5425A is to hear
12 protests pertaining to “an award or a contract, funded in whole or in party by funds
13 allotted to the Guam Department of Education for Capital Improvement Projects and air
14 conditioning repair and maintenance.” The parties, including the interested parties, may
15 also offer comments on whether Buy American or local preference statues apply to the
16 subject IFB. Please note that in its bid Softchoice identified itself as being 100 per cent
17 owned by Softchoice Corporation of Toronto, Canada.

18 Dated October 3, 2012.

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20 _____
21 **PETER C. PEREZ, ESQ.,**
22 **Hearing Officer**

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Exhibit A

U.S. Department of Education Letter of

September 25, 2012, to

The Honorable Eddie Calvo,

Governor of Guam



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE DEPUTY SECRETARY

September 25, 2012

The Honorable Eddie Calvo
Office of the Governor of Guam
Ricardo J. Bordallo Governor's Complex
Adelup, Guam 96910

Dear Governor Calvo:

The purpose of this letter is to inform you that the U.S. Department of Education (Department) extends from September 30, 2012 to September 30, 2013 the date by which Guam may obligate funds under the Adequate Education Act Trust Account (Trust Account) for capital improvement and technology upgrade projects. In your September 14, 2012 letter to the Department, you agreed to the conditions that were set forth in the Department's September 12, 2012 response to Guam's July 19, 2012 extension request. Those conditions are as follows:

- Guam will obligate all Trust Account funds by September 30, 2013;
- By October 15, 2012, Guam will provide the Department with the amount of funds obligated by project as of September 30, 2012;
- On the 15th of each succeeding month, Guam will provide the Department with a report on the progress in obligating funds and completing the relevant projects. (The Department will contact Guam officials to discuss the format and specific contents for those reports.);
- Guam will not oppose any steps by the Department to recover Trust Account funds not obligated by September 30, 2013; and
- Guam will not oppose any steps by the Department to rescind approval of the extension or to recover funds if Guam fails to provide the required reports by the dates noted above or does not make adequate progress in completing the capital improvement and technology projects.

The Department will continue to work with Guam to ensure that public school children in Guam benefit from the timely completion of these capital improvement and technology upgrade projects. We recognize that in certain situations there may be a need for Guam to request approval to adjust the budgets for individual projects. The Department will consider such requests on a project-by-project basis.

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400 MARYLAND AVE., SW, WASHINGTON, DC 20202

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

If you need any assistance or have any questions regarding this matter, please do not hesitate to contact James Butler of my staff at James.Butler@ed.gov or 202-260-9737.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ann Whalen', written in a cursive style.

Ann Whalen
Director, Policy and Program Implementation
Implementation and Support Unit

cc: Jon Fernandez
Art Mariano