



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

**PROCUREMENT APPEALS**

IN THE APPEAL OF, ) **APPEAL NO: OPA-PA-15-005**  
 )  
 PACIFIC DATA SYSTEMS, INC., ) **ORDER DISMISSING APPEAL**  
 )  
 Appellant )

**THIS MATTER** came before the Public Auditor pursuant to an appeal filed on April 7, 2015, by Appellant PACIFIC DATA SYSTEMS, INC., (Hereafter “PDS”) regarding the GUAM POWER AUTHORITY’s (Hereafter “GPA”) failure to issue a decision on PDS’ November 24, 2014 Protest concerning Multi-Step GPA-IFB-072-14 (Voice & Data Services) (Hereafter referred to as “IFB”). After reviewing PDS’ Notice of Appeal *Sua Sponte*, the Public Auditor hereby FINDS and ORDERS the following:

1. The Public Auditor finds that she does not have the jurisdiction to hear PDS’ appeal at this time because GPA has failed to produce a decision on PDS’ November 24, 2014 Protest. The Public Auditor has the power to review and determine *de novo* any matter properly submitted to her. 5 G.C.A. §5703 and 2 G.A.R., Div. 4, Chap. 12, §12103(a). The Public Auditor has the jurisdiction to hear an appeal of a purchasing agency’s written decision on a protest concerning the purchasing agency’s method of source selection, solicitation, or award of a contract. 5 G.C.A. §5425(e), and 2 G.A.R., Div. 4, Chap. 12, §12201(a). Here, as stated above, PDS’ appeal is based on GPA’s failure to issue a Decision on PDS’ November 24, 2014 Protest. Thus, without a GPA decision on PDS’ November 24, 2014 Protest, this matter is not properly before the Public Auditor and the Public Auditor does not have the jurisdiction to hear it. Further, a copy of the purchasing agency’s protest decision is a required part of the Notice of Appeal and an appeal lacking the protest decision being appealed is subject to dismissal. 2 G.A.R., Div. 4, Chap. 12, §12104(b)(5) and (7). Thus, as there is no decision on PDS’

1 November 24, 2014 Protest, pursuant to 2 G.A.R., Div. 4, Chap. 12, §12104(b)(7), this matter is  
2 hereby dismissed without prejudice.

3           2. The Public Auditor finds that she has the authority to compel GPA to produce the  
4 Decision for PDS' November 24, 2014 Protest. The Public Auditor shall have the power to  
5 compel the production of documents by any employee of the Government of Guam. 5 G.C.A.  
6 §5703 and 2 G.A.R., Div. 4, Chap. 12, §12103(a). Further, the Public Auditor shall use this  
7 authority to promote the integrity of the procurement process and purposes of 5 G.C.A. Chapter  
8 5. Id. Here, the Public Auditor finds that she must exercise her aforementioned authority to  
9 compel the production of the aforementioned decision because it has been over five (5) months  
10 since PDS filed its protest and GPA has failed to issue a protest decision. GPA is hereby  
11 reminded that if a protest is not resolved by mutual agreement, the head of a purchasing agency,  
12 or his or her designee shall **promptly** and **expeditiously** (bold emphasis added) issue a decision  
13 in writing stating the reasons for the action taken, informing the protestant of its right to  
14 administrative and judicial review, and a copy of such decision shall be mailed or otherwise  
15 furnished immediately to the protestant, and any other party intervening. 5 G.C.A. §5425(c) and  
16 (d) and 2 G.A.R., Div. 4, Chap. 9, §9101(g). Thus, GPA is required to issue a decision on PDS'  
17 protest promptly and expeditiously and has failed to do so. Accordingly, the Public Auditor  
18 hereby ORDERS GPA to produce issue its decision on PDS' November 24, 2014 Protest  
19 concerning the IFB and serve it on PDS no later than 5:00 p.m. on May 12, 2015.

20           3. This is a Final Administrative Decision. The Parties are hereby informed of their right  
21 to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance  
22 with Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final  
23 Administrative Decision. 5 G.C.A. §5481(a). A copy of this Decision shall be provided to the

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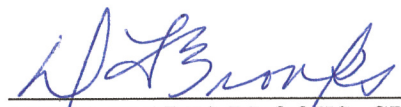
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1 parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made  
2 available for review on the OPA Website [www.opaguam.org](http://www.opaguam.org).

3  
4 **SO ORDERED** this 30<sup>th</sup> day of April, 2015.

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DORIS FLORES BROOKS, CPA, CGFM  
11 PUBLIC AUDITOR



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APR/30/2015/THU 01:12 PM

## BROADCAST

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	APR/30	01:06PM	3000265	0:01:42	4	MEMORY OK	G3 2976
002		01:08PM	6483165	0:00:51	4	MEMORY OK	SG3 2976
003		01:09PM	6469403	0:00:58	4	MEMORY OK	SG3 2976
004		01:11PM	6483290	0:01:01	4	MEMORY OK	SG3 2976
TOTAL				0:04:32	16		

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# FAX

<b>To:</b>	<b>John Day</b> <b>President</b> Pacific Data Systems, Inc. (PDS)	<b>From:</b>	<b>Doris Flores Brooks</b> <b>Guam Public Auditor</b> Office of Public Accountability
<b>Phone:</b>	PDS Fax: (671) 300-0265	<b>Pages:</b>	4 (including cover page)
<b>Fax:</b>	GPA Procurement Office Fax: (648-3165)		
<b>CC:</b>	Graham Botha, Esq. Fax: (648-3290)	<b>Date:</b>	Thursday, April 30, 2015
	Docomo Pacific, Inc.		
	Calvo Fisher & Jacob LLP <b>Fax: 646-9403</b>		

**Re:** OPA-PA-15-005 Order Dismissing Appeal

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Auditor