

1 **34<sup>th</sup> GUAM LEGISLATURE**  
2 Julian Aguon, Legislative Counsel  
3 Ste. 216, 194 Hernan Cortez Ave.  
4 Hagåtña, Guam 96910  
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7 *Attorney for 34<sup>th</sup> Guam Legislature*

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: April 4, 2017

TIME: 9:30  AM  PM BY: Chni

FILE NO OPA-PA: 17-005

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

8 IN THE MATTER OF  
9 Pacific Data Systems, Inc. (PDS)  
10 Appellant

11 and

12 Guam Legislature,

Purchasing Agency

OPA-PA-17-005

**STATEMENT IN RESPONSE TO  
APPEAL**

13 Comes now the 34<sup>th</sup> Guam Legislature (Legislature) by and through its counsel and files  
14 this Statement in Response to the appeal by Pacific Data Systems (PDS).

15 **I. HAVING CANCELLED THE SOLICITATION, THE LEGISLATURE**  
16 **REQUESTS THAT THIS APPEAL BE DISMISSED AS MOOT**

17 On March 27, 2017, Executive Director Jermaine Alerta, having determined it to be in the  
18 public interest, cancelled Invitation for Bid No. GL-01-FY17 (“Solicitation”), communicating the  
19 same to all interested parties. See Exhibit A. Based on that cancellation, PDS filed a request to  
20 withdraw the instant appeal on March 31, 2017. See Exhibit B. The Legislature likewise requests  
21 that this appeal be dismissed as moot.

22 **II. BECAUSE THE SOLICITATION WAS CONTRARY TO LAW, THE**  
23 **LEGISLATURE WAS CORRECT TO CANCEL IT**

24 The Solicitation was contrary to law. It contained a provision that unduly extends the  
25 applicability of the Guam Procurement Law (codified at 5 GCA § 5001 *et seq.*) and its  
26 implementation regulations (contained in Title 2 of the Guam Administrative Rules and  
27 Regulations) to the Guam Legislature. See Invitation For Bid No. GL-01-FY17 at 19 (Jan. 27,

1 2017). Neither the Guam Procurement Law nor its implementing regulations apply to the Guam  
2 Legislature. See 5 GCA § 5004(b) (limiting the procurement statute’s applicability to  
3 expenditures of public funds “by the Territory, *acting through a governmental body* as defined  
4 herein, under any contract[.]”) (emphasis added). The Guam Procurement Law defines a  
5 “governmental body” as “any Department, Commission, Council, Board, Bureau, Committee,  
6 Institution, Agency, Government Corporation, Authority or other establishment or establishment  
7 or official of the Executive Branch of the government of Guam[.]” 5 GCA § 5030(k). Thus, the  
8 Legislature is not a governmental body within the meaning of the procurement statute.

9 The Guam Supreme Court instructs that where a solicitation is contrary to law, it must be  
10 cancelled. See Fleet Servs. Inc., 2006 Guam 6 ¶ 35-36.

### 11 III. TO NOT DISMISS WOULD VIOLATE SEPARATION OF POWERS

12 Per the Organic Act, the government of Guam is comprised of three separate but co-equal  
13 branches of government. See 48 U.S.C. § 1421a (“The government of Guam shall consist of three  
14 branches, executive, legislative, and judicial . . .”). Thus, “implicit in the Organic Act is the  
15 traditional concept of separation of powers.” In re Request of Governor Carl T.C. Gutierrez,  
16 Relative to the Organicity and Constitutionality of Public Law 26-35, 2002 Guam 1 ¶ 32; Hamlet  
17 v. Charfauros, 1999 Guam 18 ¶ 9 (“By its very language, therefore, the Organic Act requires  
18 application of the constitutional doctrine of separation of powers to government of Guam  
19 functions.”). In sum, it would be a violation of separation of powers to not dismiss this appeal in  
20 the light of the aforementioned.

21 For all the reasons stated herein, the Legislature requests that this appeal be dismissed.

22  
23 Dated this 4<sup>th</sup> day of April, 2017.

24 Respectfully submitted,  
25 **34<sup>th</sup> GUAM LEGISLATURE**

26 By:   
27 **JULIAN AGUON, ESQ.**  
28 *Legislative Counsel*

# **EXHIBIT “A”**



**I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN**  
**Thirty-Fourth Guam Legislature**

March 27, 2017

Teleguam Holdings, LLC  
624 N. Marine Corps Drive  
Tamuning, Guam 96913

Reference: Cancellation of IFB No. GL-01-FY-17

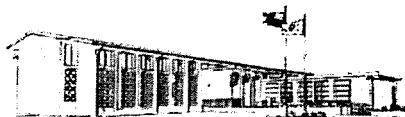
Dear Sir/Madam:

I am writing to inform you that the Guam Legislature has decided to cancel Invitation for Bid No. GL-01-FY17 ("60 Month Lease Agreement - For Telephone Services and Equipment) (hereafter, the "Solicitation").

The Solicitation contained ambiguous or inadequate specifications and was otherwise contrary to law, as it unduly extended the applicability of the Guam Procurement Law (codified at 5 GCA § 5001 *et seq.*) and its implementing regulations (contained in Title 2 of the Guam Administrative Rules and Regulations) to the Guam Legislature. To be sure, the Guam Legislature is not subject to these. Thus, exercising my authority under both Guam law and the Standing Rules of the 34th Guam Legislature, I hereby find it in the public interest and the best interest of the Territory to cancel the Solicitation.

Respectfully,

  
**JERMAINE ALERTA**  
Executive Director





**I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN**  
**Thirty-Fourth Guam Legislature**

March 27, 2017

iCONNECT  
543A Top-Plaza Building  
N. Marine Corps Drive  
Tamuning, Guam 96913

Reference: Cancellation of IFB No. GL-01-FY-17

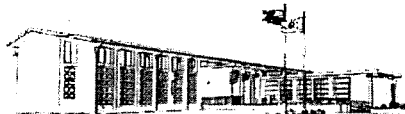
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**JERMAINE ALERTA**  
Executive Director





**I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN**  
**Thirty-Fourth Guam Legislature**

March 27, 2017

Docomo Pacific, Inc.  
219 S. Marine Corps Drive  
Century Plaza Building 2<sup>nd</sup> Floor, Suite 206  
Tamuning, Guam 96913

Reference: Cancellation of IFB No. GL-01-FY-17

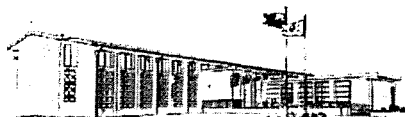
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Respectfully,

  
**JERMAINE ALERTA**  
Executive Director





**I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÅHAN**  
**Thirty-Fourth Guam Legislature**

March 27, 2017

Pacific Data Systems  
185 Ilipog Drive, Suite 204A  
Tamuning, Guam 96913

Reference: Cancellation of IFB No. GL-01-FY-17

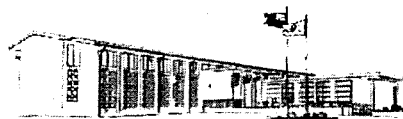
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Respectfully,

  
**JERMAINE ALERTA**  
Executive Director



# **EXHIBIT “B”**





March 31, 2017

Mr. Anthony R. Camacho, Esq.  
Hearing Officer  
Office of the Public Accountability  
Suite 401 DNA Building  
238 Archbishop Flores St.  
Hagatna, GU 96910

03-31-17  
10:15 ✓  
17-005 JTB

RE: Procurement Appeal OPA-PA-17-005

Dear Mr. Camacho:

Regarding the above referenced Procurement Appeal filed by PDS on March 20, 2017, PDS received the attached letter from the 34<sup>th</sup> Guam Legislature on March 27, 2017.

The attached letter from the 34<sup>th</sup> Guam Legislature acknowledges the ambiguities alleged by PDS in this procurement and cancels the subject procurement with plans to issue a new bid that resolves these issues. Based on this action by the 34<sup>th</sup> Guam Legislature the PDS procurement appeal is now moot.

PDS requests to withdraw and cancel our procurement appeal identified by the OPA as OPA-PA-17-005.

Sincerely,

John Day  
President/COO

LIHESLATURAN GUAHAN  
OFFICE OF THE  
EXECUTIVE DIRECTOR

MAR 31 2017

TIME: 2:00 [ ] AM: [ ] PM  
RECEIVED BY: J. Alerta

XC: Mrs. Doris Flores-Brooks – Public Auditor  
Mr. Jermaine Alerta – Executive Director, 34<sup>th</sup> Guam Legislature