



Jerrick Hernandez <jhernandez@guamopa.com>

In the Appeal of Pacific Data Systems; Consolidated Appeal No.'s OPA-PA-21-004 and OPA-PA-21-005

Claire Pollard <cpollard@rwtguam.com>

Wed, Sep 29, 2021 at 4:46 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Edwin J. Torres" <etorres@rwtguam.com>

Dear Mr. Hernandez:

Please see the attached *Motion in Limine Re: Participation of Interested Party* attached below. Should you have any questions or concerns, please feel free to contact our office.

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Regards,
Claire Pollard

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**9.29.21 Motion in Limine Re Participation of Interested Party.pdf**

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**PROCUREMENT APPEAL OF DENIAL OF PROCUREMENT PROTEST
IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Appeal of

Pacific Data Systems, Inc. (PDS),

Appellant.

**CONSOLIDATED APPEAL NOS:
OPA-PA-21-004
OPA-PA-21-005**

**MOTION IN LIMINE RE:
PARTICIPATION OF INTERESTED
PARTY**

On September 27, 2021, Teleguam holdings, LLC, dba GTA, had its counsel “enter its appearance in the above-captioned matter as counsel, on behalf of Interested Party....” Entry of Appearance and Request for Notice, 1. GTA has not participated in these consolidated proceedings, and the entry of its counsel provides no indication of what the purpose of the entry of appearance is for. To the extent that GTA seeks to enter these proceedings for reasons beyond receiving service of the papers and pleadings filed in this matter, or notice of any and all proceedings, Appellant Pacific Daily Systems, Inc. (“PDS”), by and through its undersigned counsels of record, move the Office of Public Accountability (“OPA”) for an order prohibiting any such participation by the interested party or its attorneys of record.

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MEMORANDUM IN SUPPORT OF MOTION

I. LEGAL STANDARD

The hearing officer is empowered to control hearings before the OPA. 2 G.A.R. § 12109(e) (hearing officer has authority to “[r]egulate the course of the hearing and conduct of participants therein[.]”); 2 G.A.R. § 12109(f) (“[r]eceive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious[.]”).

II. ARGUMENT

The interested party, Teleguam Holdings, LLC dba GTA (“GTA”), entered an appearance in this matter on September 27, 2021 — two days before the scheduled trial. GTA was on notice of this appeal since at least July 23, 2021. *See* Guam Department of Education (“GDOE”) Notice of Interested Parties filed on July 23, 2021. GTA, as a self-described “interested party,”¹ could have complied with the rules governing appeals before the OPA and participated in the case from the beginning. 2 GAR § 12104(c)(4) states

Comments on the agency report by an Appellant or an Interested Party, including testimony and evidence by any competing bidder, offeror or contractor of the Appellant, **shall** be filed with the Public Auditor within ten (10) days after the Public Auditor's receipt of the report, with a copy to the agency office that furnished the report. Any rebuttal an Agency may care to make shall be filed with the Public Auditor within five (5) working days after receipt by the Public Auditor of the comments to which rebuttal is directed, with a copy to the Appellant. Unsolicited

¹ GTA’s decision to describe itself as an “interested party” is significant, and should be construed as a judicial admission that this procurement remains in a “pre-award” status. 2 GAR § 12104(c)(2) explains that, following the initiation of an appeal at the OPA, **notice of the appeal is provided “to the contractor if award has been made or, if no award has been made, to all Interested Parties.”** GTA, by acknowledging that it is an interested party, has also acknowledged that “no award has been made.”

agency rebuttals shall be considered if filed within five (5) days after receipt by the Public Auditor of the comments to which rebuttal is directed.

(emphasis added). Instead of participating in this litigation and placing its litigation positions in writings, GTA has engaged in surprise litigation by filing an entry of appearance on the eve of trial. GTA should not be allowed to avoid its obligations to participate in the briefing of issues in this case and put parties on notice of its positions on those issues by waiting until two days before the hearing to make an appearance.

GTA's active participation in these proceedings should be disallowed. Pursuant to 2 G.A.R. § 12104(c)(5), "[t]he failure of an Appellant or any Interested Party to comply with the time limits stated in this section may result in resolution of the Appeal without consideration of the comments untimely filed." If GTA is allowed to participate in the proceedings and provide testimony or argument at the trial in this matter, GTA is essentially being allowed to circumvent the statutory obligations of the parties, the rules of the OPA, and the scheduling order in this matter. GTA should not be allowed to do this, and the OPA should foreclose them from providing any testimony or arguments or question any witnesses in this matter.

Alternatively, if the OPA rules that GTA will be allowed to participate, then PDS requests OPA continue the trial in this matter until GTA places its positions in writing, and PDS is allowed a meaningful opportunity to respond.

III. CONCLUSION

For the foregoing reasons, PDS requests the OPA declare that GTA may not now actively participate in this matter. Alternatively, if the OPA finds that GTA

may participate in this case, PDS requests the OPA continue the trial until PDS is put on sufficient notice of how GTA intends on participating in this case.

Submitted this 29th day of September, 2021.

RAZZANO WALSH & TORRES, P.C.

By:  _____

JOSHUA D. WALSH

EDWIN J. TORRES

Attorneys for Appellant