



Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

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**GDOE Replies to Oppositions re: Appeal Case No. OPA-PA-21-007**

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**Abmer T. Brennan** <atbrennan@gdoe.net>

Wed, Nov 10, 2021 at 4:37 PM

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Cc: Legal Admin <legal-admin@gdoe.net>

Hafa Adai All,

Please see GDOE's Replies to Oppositions re: OPA-PA-21-007. Respectfully requesting for confirmation of receipt and to include [legal-admin@gdoe.net](mailto:legal-admin@gdoe.net) for future correspondence regarding this appeal.

Si Yu'os Ma'ase.

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Guam Department of Education

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**3 attachments**

**GDOE Reply to Op Motion to Exclude OPA-PA-21-007 111021.pdf**  
346K



**GDOE Reply to Op Motion to Dismiss Lack of SMJ OPA-PA-21-007 111021.pdf**  
448K



**GDOE Rep to Op re Valid Claim OPA-PA-21-007 111021.pdf**  
282K

1 **GUAM DEPARTMENT OF EDUCATION**

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8 **OFFICE OF THE PUBLIC AUDITOR**  
9 **PROCUREMENT APPEALS**

10 In the Appeal of

11 APPEAL CASE NOS.: OPA-PA-21-007

12 G4S Security Systems (Guam) Inc.,

13 **REPLY TO OPPOSITION TO MOTION TO**  
14 **EXCLUDE THIRD PLACE BIDDER (PDS)**  
15 **FROM THIS APPEAL PROCESS.**

16 Appellant.

17 **I. INTRODUCTION**

18 On April 13, 2021, GDOE issued its Multi-Step IFB 026-2021 for Indoor and Outdoor  
19 Wireless Local Area Network (WLAN) Infrastructure Installation Project (hereinafter referred to  
20 as the "IFB"). The final prices submitted by vendors for the IFB from lowest to highest were  
21 Technologies for Tomorrow Inc. (TFT) (\$1,531,820.00), G4S Security Systems (Guam) Inc. or  
22 Appellant (\$1,944,000.00), PDS (\$2,213,208.00), and California Pacific Technical Services LLC  
23 (\$3,750,285.30). See Procurement Record at 545. On July 13, 2021, GDOE awarded the IFB to  
24 TFT as the lowest, most responsible and responsive bid for the IFB. On August 10, 2021,  
25 Appellant protested the award made to TFT. On September 3, 2021, GDOE issued its denial of  
26 Appellant's protest. On September 20, 2021, GDOE received the notice of receipt of appeal from  
27 the Office of the Public Auditor (OPA). On October 14, 2021, PDS even though it was the third  
28 place bidder for the IFB, filed its Comments on the Agency Report. GDOE now respectfully  
moves the OPA to exclude the third place bidder PDS from participating in this Appeal process,  
because Guam Procurement law does not authorize PDS's participation herein since PDS is not

1 the protestant, not the appellant, not an interested party, and has no legal standing in this appeal.  
2 The following is GDOE's response to PDS's opposition to Motion to Exclude Third Place Bidder  
3 (PDS) from this Appeal Process.

4 **II. PDS SHOULD BE EXCLUDED FROM PARTICIPATION IN THIS APPEAL**  
5 **BECAUSE IT HAS NO STANDING, IS NOT OFFERING EVIDENCE OR TESTIMONY**  
6 **IN FURTHERANCE OF THE APPEAL, BUT INSTEAD IS ATTEMPTING TO**  
7 **IMPROPERLY INTERVENE AND RAISE LEGAL ARGUMENTS SOLELY INTENDED**  
8 **TO DISRUPT THIS APPEAL PROCESS.**

9 Guam Procurement Law authorizes the Hearing Officer for Procurement Appeals to  
10 regulate the course of the hearing and conduct of participants therein and to consider testimony  
11 and evidence submitted by any competing bidder, offeror or contractor of the protestant or  
12 appellant. See 2 GAR Div. 4 §§12109(e) & (j). **PDS is not the protestant and not the**  
13 **appellant in this Appeal.** See 5 GCA §5703(e); see also 2 GAR Div. 4 §§12109(e) & (j). PDS  
14 is not an interested party in this Appeal. See 2 GAR Div. 4 §12102(b). Guam Procurement law  
15 defines an interested party as an actual or prospective bidder, offeror, or contractor **who appears**  
16 **to have a substantial and reasonable prospect of receiving an award if the Appeal is denied.**  
17 *Id.*; compare with 31 USC §3551(2) (defines an interested party with respect to a contract or  
18 solicitation or other request for offer as an actual or prospective bidder or offeror **whose direct**  
19 **economic interest would be affected by the award** of the contract or by failure to award the  
20 contract). In addition, the Public Auditor's jurisdiction shall be utilized to promote the integrity  
21 of the procurement process and the purposes of 5 GCA Chapter 5. See 5 GCA §5703(f).  
22 Therefore, the Public Auditor has the authority to exclude PDS's participation in this case, which  
23 is clearly for the sole purpose of disrupting the integrity of the procurement process. *Id.*

24  
25 In addition, the Public Auditor **may consider testimony and evidence submitted by any**  
26 **competing bidder, offeror or contractor of the protestant.** See 5 GCA §5703(e). Here, PDS  
27 is not a protestant and not the Appellant. Also, PDS has not submitted evidence or testimony.

1 Rather, PDS's filings are only and simply improper legal arguments. This is a very important  
2 distinction and PDS has no authority under the law to participate in this appeal. Therefore, the  
3 Public Auditor has the authority to exclude PDS from this Appeal as they will gain nothing from  
4 this Appeal, have not offered evidence or relevant testimony, and clearly intend to disrupt the  
5 Appeal process with their improper arguments. *See* 5 GCA §5703(e); *see also* 2 GAR Div. 4  
6 §§12109(e) & (j).

7 Proper Standing of a Party in litigation is a fundamental and basic principle. It is not  
8 novel. In *In the Appeal of Pacific Data Systems, Inc.*, OPA-PA-21-003, on June 28, 2021, PTI  
9 Pacifica Inc, dba IT&E, moved for dismissal of PDS's appeal for lack of standing as well, arguing  
10 PDS was not an aggrieved party and not otherwise in line for being awarded a contract regardless  
11 of the outcome of that protest. *See* IT&E Motion to Dismiss PDS Protest, *In the Appeal of*  
12 *Pacific Data Systems, Inc.*, OPA-PA-21-003. In this case, PDS lacks standing as well and is even  
13 further removed from this Appeal as PDS is neither the Protestant nor the Appellant, and does not  
14 offer evidence or testimony to further the Appeal process. Therefore, because PDS lacks both  
15 statutory and constitutional standing, and is not offering actual evidence and testimony, PDS  
16 should be excluded from this Appeal and further disrupting this Appeal process.

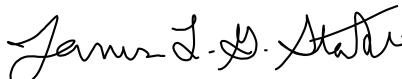
### 17 CONCLUSION

18 For these reasons, GDOE respectfully requests that the OPA exclude PDS from  
19 participating in this Appeal Process.

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21  
22 Respectfully submitted this 10<sup>th</sup> day of November, 2021.

23 **GUAM DEPARTMENT OF EDUCATION**

24 By:

  
25 **JAMES L.G. STAKE**  
26 *Legal Counsel*