

OFFICE OF PUBLIC ACCOUNTABILITY

Doris Flores Brooks, CPA, CGFM

Public Auditor

PROCUREMENT APPEALS

IN THE MATTER OF,

PACIFIC DATA SYSTEMS,

Protestor

OPA Docket OPA-PA-12-014

**SUMMARY ORDER DISSOLVING STAY
AND RATIFYING AWARD TO
SOFTCHOICE AS IN THE BEST
INTERESTS OF THE TERRITORY**

INTRODUCTION

On September 26, 2012, PACIFIC DATA SYSTEMS (“PDS”) protested in writing to the PUBLIC AUDITOR the Notice of Bid Status and Intent to Award that the GUAM DEPARTMENT OF PUBLIC EDUCATION (“GDOE”) had issued on September 20, 2012 to all bidders who had submitted a bid in response to GDOE Invitation for Bid 014-2012 (“IFB”) for student and teacher laptop computers and related materials and services.

A hearing was convened before the PUBLIC AUDITOR at 3:05 p.m., on Monday, October 8, 2012, in Suite 907, DNA Building, Hagatna, Guam. Present for the hearing, in addition to the PUBLIC AUDITOR, were Peter C. Perez, Esq., HEARING OFFICER, John Day, president, PDS; Bill R. Mann, Esq., counsel for PDS; Andrew T. Perez, Esq., counsel for GDOE; Rebecca M. Perez, Esq., counsel for GDOE; and Marcus Y. Pido, Supply Management Administrator, GDOE.

No one was present for SOFTCHOICE or COMPACIFIC, the entities that GDOE had notified of the protest as interested parties.


PDS submitted its protest directly to the PUBLIC AUDITOR on the basis that “the source of the funding for this procurement is from the American Recovery Reinvestment Act (ARRA).” In its protest, PDS correctly noted that 5 G.C.A. § 5425.1 mandates that protests be made directly to the PUBLIC AUDITOR when “an award or a contract [is] funded, in whole or in part, by the

1 funds allotted to the Guam Department of Education from the 2009 American Recovery and
2 Reinvestment Act (ARRA).” P.L. 31-12:2, enacted March 9, 2011. The PUBLIC AUDITOR
3 holds that PDS properly protested GDOE’s actions pursuant to 5 G.C.A. § 5425.1 and that the
4 PUBLIC AUDITOR is authorized to and shall rule on the protest pursuant to that section and
5 other applicable law prescribing the PUBLIC AUDITOR’s responsibility to deal with government
6 procurement appeals. *See In the Matter of Sanford Technology Group, LLC*, OPA PP 11-008,
7 June 10, 2011.

8 On the basis of the testimony and exhibits presented at the hearing, the arguments of
9 counsel, and the papers filed herein, the PUBLIC AUDITOR finds that notwithstanding DOE’s
10 errors in complying with applicable provisions of the Procurement Law, 5 G.C.A., Chapter 5, and
11 there being nothing in the record to suggest that SOFTCHOICE acted fraudulently or in bad faith
12 in submitting its bid, and being mindful that the termination, cancellation or nullification of
13 GDOE’s award to SOFTCHOICE would result in a loss to GDOE of over two million dollars of
14 ARRA-Rural and Low Income School Program (RLIS) funds, it is in the best interests of the
15 Territory that the award to SOFTCHOICE be ratified and affirmed. 5 G.C.A. § 5452(a)(1)(A).
16 Accordingly, the PUBLIC AUDITOR orders that the stay that was orally imposed at the hearing
17 is dissolved and that GDOE’s award to SOFTCHOICE is ratified and affirmed. A detailed order
18 will follow.

19 Pursuant to 5 G.C.A. § 5425.1, this Summary Order is final and conclusive and there is no
20 right of appeal or judicial review. *Id.* A copy of this Summary Order shall be provided to the
21 parties and their respective attorneys and shall be made available for review on the OPA Website
22 www.guamopa.org.

23 **DATED** this 11th day of October, 2012

24 
25 _____
26 DORIS FLORES BROOKS, CPA, CGFM
27 PUBLIC AUDITOR OF GUAM
28



FAX

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

From: **Doris Flores Brooks, CPA, CGFM**
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Agency: **Guam Department of Education** Pages 3 (including cover page)

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

Date: October 11, 2012

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

All Media

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Re: **OPA-PA-12-004 Summary Order Dissolving Stay and Ratifying
Award to Softchoice as in the Best Interests of the Territory**

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Vince Duenas – vduenas@guamopa.org

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