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1 BERMAN O'CONNOR & MANN
2 Suite 503, Bank of Guam Bldg.
3 111 Chalan Santo Papa
4 Hagåtña, Guam 96910
5 Telephone No.: (671) 477-2778
6 Facsimile No.: (671) 477-4366

7 Attorneys for Appellant:
8 *PACIFIC DATA SYSTEMS, INC.*

9 **OFFICE OF PUBLIC ACCOUNTABILITY**

Docket No. OPA-PA 14-007

10 In the Appeal of
11 *PACIFIC DATA SYSTEMS, INC.,*
12 Appellant.

**RESPONSE OF PACIFIC DATA
SYSTEMS, INC. TO HEARING
OFFICER'S ORDER**

13 The Appellant Pacific Data Systems, Inc. ("PDS") responds as follows to
14 the Hearing Officer's Order:

15 **I. INTRODUCTION**

16 By Order dated July 29, 2014, the Hearing Officer Peter C. Perez, Esq.,
17 ordered the parties to brief two questions:

- 18 1. Whether or not GVB had jurisdiction to entertain PDS' Protest in
19 light of PDS' pending appeal in *In the Appeal of Pacific Data Systems,*
20 *Inc.,* OPA-PA 14-003.
- 21 2. Whether or not PDS' instant appeal was timely filed.

22 **II. THE APPEAL OF OPA-PA 14-003 DID NOT PRECLUDE GVB**
23 **FROM CONSIDERING PDS' SUBSEQUENT PROTEST**

24 PDS assumes the issue is whether the automatic stay in 5 GCA § 5425(g),
25 which was triggered by the PDS appeal in OPA-PA 14-003, precluded GVB from
26 considering the second protest filed by PDS with GVB. The answer is that it does not.
27 The automatic stay only precludes an agency from proceeding further with a
28 solicitation or the award of a contract. It does not preclude an agency from considering

1
2 a second protest while the first protest is on appeal to the OPA. The consideration of
3 the second protest did not constitute proceeding further "... with the solicitation or with
4 the award of the contract ..."

5 This issue came up in *In the Appeal of Pacific Data Systems, Inc.*, OPA-PA 12-
6 012. That appeal was made by PDS based on the failure of GSA to render a timely
7 decision in a protest that had been filed by PDS. In its Agency Report, GSA took the
8 position that the automatic stay prohibited it from considering the PDS protest on the
9 grounds that PDS had already filed an appeal with the OPA in the same procurement
10 regarding GSA's denial of a previous protest that PDS had made.

11 In its Decision and Order of September 28, 2012, the Public Auditor
12 rejected GSA's argument, and ordered GSA to make a decision on the pending protest
13 within thirty days. This means that the pendency of an appeal to the OPA does not
14 preclude the agency from considering a subsequent protest in the same procurement.
15 Thus GVB had jurisdiction to consider PDS' second protest, which it did.

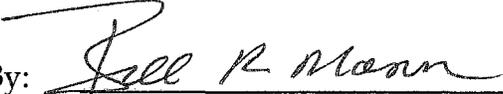
16 **III. THIS APPEAL IS TIMELY**

17 GVB denied the protest which led to this appeal by letter dated and
18 served on PDS on June 10, 2014. See Exhibit B to the PDS appeal. PDS timely filed this
19 appeal 15 days later on June 25, 2014. See 15 GCA § 5425(e).

20 DATED this 1st day of August, 2014.

21 Respectfully submitted,

22 **BERMAN O'CONNOR & MANN**
23 Attorneys for Appellant
24 **PACIFIC DATA SYSTEMS, INC.**

25 By: 
26 **BILL R. MANN**