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Attorneys for the General Services Agency

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY PROCUREMENT APPEAL

IN THE APPEAL OF) DOCKET NO. OPA-PA-12-011
PACIFIC DATA SYSTEMS, INC. Appellant.	REBUTTAL TO APPELLANT'S COMMENTS ON AGENCY REPORT
)))

Pursuant to 2 GAR § 12194(c)(4) the General Service's Agency submits the following rebuttal to PDS' Comments on Agency Report filed on June 11, 2012.

Local Procurement Applicable

The Government of Guam is mandated to apply the policy in favor of local procurement.

5 GCA § 5008 states:

"All procurement of supplies and ad services **shall** be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:..." (Emphasis added)

5 GCA § 5008 does not give discretion to GSA to pick and choose to whom the policy of local procurement applies. In other words 5 GCA § 5008 applies to all vendors that meet the criteria. GTA meets the requirements 5 GCA § 5008.

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Rebuttal to PDS' Comments on Agency Report
Before the Public Auditor Procurement Appeal
Docket No. OPA-PA-12-011

ORIGINAL

CV0647-11 Currently before Judge Lamorena

On April 8, 2011 PDS filed CV0647-11 this case remains open at the Superior Court of Guam. Attached is a copy of the Complaint. GSA disputes PDS's assertion that these are separate matters and unrelated matters. The heart of both CV0647-11 and IFB GSA-064-11 is telecommunication services for the Government of Guam.

Respectfully submitted this 15th day of June 2012.

OFFICE OF THE ATTORNEY GENERAL **Leonardo M. Rapadas**, Attorney General

By:

FRED NISHIHIRA

Assistant Attorney General

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4	Facsimile No.: (671) 477-4366 Attorneys for Plaintiffs:	
5	PACIFIC DATA SYSTEMS, INC. and IOHN DAY	
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7	IN THE SUPERIOR COURT OF GUAM	
8	PACIFIC DATA SYSTEMS, INC., and) CIVIL CASE NO. CV 0647-11	
9	JOHN DAY,	
10	Plaintiffs, vs.	
11	GOVERNMENT OF GUAM, and COMPLAINT	
12	CLAUDIA ACFALLE, personally and) in her capacity as Chief Procurement) Officer for the Government of Guam,	
13	Officer for the Government of Guam,	
14	Defendants.	
15)	
16	The Plaintiffs PACIFIC DATA SYSTEMS, INC. and JOHN DAY for their	
17	Complaint state as follows:	
18	1. The Plaintiff Pacific Data Systems, Inc. ("PDS") is a	
19	telecommunications company which is authorized to do business on Guam, and pays	
20	taxes on Guam.	
21	2. The Plaintiff John Day is a resident of Guam, President of PDS,	
22	and a taxpayer on Guam.	
23	3. The Defendant Government of Guam is the political entity which	
24	governs Guam.	
25	4. The Defendant Claudia Acfalle is an employee of the Government	
26	of Guam, and serves as the Chief Procurement Officer for the Government of Guam.	
27	She is sued herein in both her personal and official capacity.	
28	H:\Christine\BRM\Day\PDS v GovGuam\Complaint 04082011.doc	
	Office of the Attorney General of Guam	
	Civil/Solicitor Division	

§ 3105.

5. This Court has jurisdiction in this matter pursuant to 7 G.C.A.

FIRST CLAIM FOR RELIEF

- 6. The Guam Telecommunications Act of 2004 provided for the privatization of Guam Telephone Authority. The purposes of that Act include the creation of a regulatory environment conducive to competition, and to encourage the entry of new providers of telecommunications services in Guam.
- 7. PDS is a Competitive Local Exchange Carrier ("CLEC"). It received a Certificate of Authority by the Guam Public Utilities Commission (GPUC) to engage in telecommunication services on Guam on September 23, 2005.
- 8. After its receipt of its Certificate of Authority, PDS negotiated an Interconnection Agreement with GTA Telecom LLC ("GTA") and filed a tariff for services with the GPUC as required by Guam law. As of July 5, 2008, PDS was authorized to provide local exchange services to customers on Guam, became a competitor to GTA, and was ready and able to provide telecommunications services to the Government of Guam.
- 9. Guam's procurement law, 5 G.C.A. § 5001 et seq., mandates that the Government of Guam including all line agencies procure their telecommunication services through competitive bidding in accordance with Guam's procurement law.
- 10. Commencing in 2008, representatives of PDS had a series of meetings and communications with representatives of the General Services Administration, Government of Guam ("GSA"), including the Defendant Acfalle, to discuss the new deregulated local telecommunications environment, and to request that the Government procure its telecommunication services in accordance with Guam's procurement law.

- 18. The Defendant Claudia Acfalle, as Chief Procurement Officer for the Government of Guam, has the duty to supervise the procurement of all supplies and services required by the line agencies of the Government of Guam that do not have independent procurement authority, including the duty to ensure that those services and supplies are procured in accordance with the procurement law.
- 19. Commencing in 2008, the Defendant Acfalle was specifically made aware of the fact that the provision of telecommunication services to the line agencies of the Government must be procured in accordance with the competitive bidding requirement of the Guam's procurement law.
- 20. Despite this knowledge, the Defendant Acfalle has failed to require the line agencies of the Government to procure their telecommunication services in accordance with the procurement law.
- 21. This failure has resulted in the illegal expenditures of millions of dollars by the Government since July 5, 2008, the amount of which shall be proven at trial, for which the Defendant Acfalle is personally liable pursuant to 5 G.C.A. § 7103.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court:

- (1) Expedite the processing of this action pursuant to 5 G.C.A. § 7116;
- (2) On the First Claim for Relief, enter its Judgment enjoining the Government of Guam and its officers, agents, contractors and employees including the Defendant Acfalle from expending money for the procurement of telecommunication services for its line agencies without first complying with the procurement law of Guam;
- (3) On the Second Claim for Relief, enter its Judgment against the Defendant Acfalle personally for all sums illegally paid by the Government for the

	Pacific Data Systems, Inc., and John Day vs. Government of Guam, et al. Complaint
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2	provision of telecommunication services to the line agencies of the Government since
3	July 5, 2008, which amount shall be proven at trial;
4	(4) Award the Plaintiffs reasonable costs and attorneys' fees
5	pursuant to 5 G.C.A. § 7112;
6	(5) Award pre-judgment interest as provided by law;
7	(6) Enter such other and further relief as the Court may deem just.
8	DATED this day of April, 2011.
9	BERMAN O'CONNOR & MANN Attorneys for Plaintiffs
10	Attorneys for Plaintiffs PACIFIC DATA SYSTEMS, INC. and IOHN DAY
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12	By: BILL R. MANN
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