



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

PROCUREMENT APPEALS

1
2
3
4
5
6 IN THE APPEAL OF,

) **APPEAL NO: OPA-PA-14-013**

7 PACIFIC DATA SYSTEMS, INC.,

) **DECISION AND ORDER RE PRE-
HEARING MOTIONS**

8 Appellant
9

10
11 To: **Purchasing Agency:**
12 Guam Power Authority
13 C/O D. Graham Botha, Esq.
14 1911 Army Drive, Ste 227
15 Harmon, Guam, 96913
16 Facsimile: (671) 648-3290

17 **Appellant:**
18 Pacific Data Systems, Inc.
19 C/O Bill R. Mann, Esq.
20 Berman O'Conner & Mann
21 Suite 503, Bank of Guam Bldg.
22 111 Chalan Santo Papa
23 Hagåtña, Guam, 96910
24 Facsimile: (671) 477-4366

25 **Interested Party:**
26 DOCOMO Pacific, Inc.
27 C/O Jennifer Calvo-Quitugua, Esq.
28 Calvo Fisher & Jacob L.L.P.
259 Martyr Street, Suite 100
Hagåtña, Guam, 96910
Facsimile: (671) 646-9403

26 **THIS MATTER** came before the Hearing Officer on January 23, 2015 for a Motion
27 Hearing. Josephine Chang was present on behalf of Appellant and was represented by
28 Appellant's Counsel of Record, Bill R. Mann, Esq. Jesse Reyes was present on behalf of the
Purchasing Agency and was represented by the Purchasing Agency's counsel of record, Graham

1 Botha, Esq. Interested Party DOCOMO Pacific, Inc. (Hereafter Referred to as DOCOMO), was
2 represented by their counsel of record, Jennifer Calvo-Quitugua, Esq. After hearing the
3 arguments of the parties and for good cause shown, the Hearing Officer hereby FINDS and
4 ORDERS the following:

5 1. GPA's December 18, 2014 Request for an Extension to file the Procurement Record is
6 GRANTED. Generally, a Purchasing Agency is generally required to file a complete copy of the
7 procurement record relevant to the appeal with the OPA within five (5) working days of
8 receiving a Notice of Appeal. 2 G.A.R., Div. 4, Chap. 12, §12104(c)(3). Here, GPA received
9 notice of the appeal on December 10, 2014, and the five (5) working day period for GPA to file
10 the procurement record relevant to the appeal expired on or about December 17, 2014. GPA
11 filed its procurement record and its request for an extension contemporaneously on December
12 18, 2014. Albeit one (1) day late, neither the Appellant nor DOCOMO has shown any prejudice
13 by the late filing. Further, the Hearing Officer notes that the procurement record in this matter is
14 voluminous and exceeds 2,000 pages of documents. Hence, pursuant to 2 G.A.R., Div. 4, Chap.
15 12, §12109(d), GPA's Request for an Extension to file the Procurement Record is hereby
16 GRANTED and the deadline for GPA to file the procurement record is extended to December
17 18, 2014, the date it was filed.

18 2. DOCOMO's January 5, 2015 Request for additional time to Submit Comments to
19 Agency Report is GRANTED. Generally, interested parties are required to file their comments
20 on an Agency Report within ten (10) days after the OPA's receipt of the Agency Report. 2
21 G.A.R., Div. 4, Chap. 12, §12104(c)(4). Here, GPA filed its Agency Report on December 24,
22 2014 and the initial ten (10) day period for the other parties to submit their comments on the
23 Agency Report expired on or about Saturday, January 3, 2015, and was automatically extended
24 to Monday, January 5, 2015 because that day was the first Monday after the weekend expiration
25 date. Here, on January 5, 2015, DOCOMO filed its request for additional time to submit its
26 comments to the Agency Report because it had not received formal notice of PDS' appeal and
27 requested an additional seven (7) days to file their comments which expired on January 12, 2014.
28 On January 12, 2014, DOCOMO filed its Comments to GPA's Agency Report. The
procurement record filed by GPA in this matter confirms that GPA received notice of this appeal

1 on or about December 10, 2014, but there is no evidence that GPA fulfilled its obligations set
2 forth in 2 G.A.R., Div. 4, Chap. 12, §12104(c)(2), by giving notice of the appeal to all the
3 interested parties and instruct them to communicate directly with the OPA regarding the status
4 of the appeal. The Hearing Officer finds that GPA's failure to provide this required notice to the
5 interested parties has prejudiced DOCOMO's ability to file its comments to GPA's Agency
6 Report in a timely manner. Pursuant to 2 G.A.R., Div. 4, Chap. 12, §12109(d), DOCOMO's
7 Request for an Extension to file its Comments to the Agency Report is hereby GRANTED and
8 the deadline for DOCOMO to its comments is extended to January 12, 2015, the date they were
9 actually filed.

10 3. PDS' Motion to Enforce the Automatic Stay is untimely and shall not be considered.
11 On December 24, 2014, the Hearing Officer issued a Notice of Pre-Hearing Conference and
12 Motion Filing Deadline which established 5:00 p.m. on January 9, 2015 as the motion filing
13 deadline in this matter. The Hearing Officer finds that PDS received this Notice on December
14 29, 2014. Despite being given notice of the January 9, 2015 motion filing deadline, PDS did not
15 file its Motion to Enforce the Automatic Stay until January 22, 2015 and PDS has shown no
16 cause justifying the filing of its motion thirteen (13) days after the motion filing deadline had
17 expired. Pursuant to 2 G.A.R., Div. 4, Chap. 12, §12109(d), (g), and (h), the Hearing Officer
18 hereby finds that PDS's Motion to Enforce the Automatic Stay is untimely filed, that there is no
19 just cause excusing said late filing, and accordingly, it shall not be considered. However, as the
20 issue of whether a purchasing agency is complying with the provisions of 5 G.C.A. §5425(g) by
21 not proceeding with the solicitation or award of a contract until the final resolution of a
22 procurement protest concerning the same is important to preserving the integrity of the
23 procurement process, PDS may raise the issue of whether GPA is complying with the automatic

24 ///

25 ///

26 ///

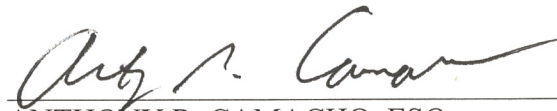
27 ///

28 ///

1 stay imposed by 5 G.C.A. §5425(g) at the Hearing for the Appellant's Appeal that will be held
2 on February 9, 2015.

3
4 **SO ORDERED NUNC PRO TUNC** as of January 23, 2015, this 9th day of March, 2015

5 by:

6
7
8 
9 _____
10 ANTHONY R. CAMACHO, ESQ.
11 Hearing Officer
12
13
14

15 **Acknowledgement Receipt:**

16 _____
17 Receiver's Signature

18 _____
19 Print Name

20 _____
21 Date
22
23
24
25
26
27
28