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 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

DATE: 5/13/15

TIME: 2:10 AM PM BY: AG

FILE NO OPA-PA: 15-003

Attorneys for the Government of Guam

IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of)	Docket No. OPA-PA-15-003
)	
Pacific Data Systems, Inc. (PDS),)	
)	TRIAL BRIEF
Appellant.)	
_____)	

The gist of this appeal is that the “Settlement Agreement” in a previous consolidated appeal bars the issuance of this particular RFQ. [See Pacific Data Systems’ Ex. 4]. This argument is wrong for several reasons.

The settlement in GSA-IFB-12-002 was executed on May 18, 2012 but was never intended to last four years. Paragraph 4 thereof states that GSA will issue RFQs for “small purchases only” but only for emergency services and only until September 30, 2012, the end of fiscal year 2012. “The RFQs will cover the Government of Guam telecommunications needs until September 30, 2012 or until implementation of service under GSA-IFB-064-11, whichever occurs first.” September 30, 2012 passed more than three and a half years ago, while the litigation arising from 064-11 is still, unfortunately, ongoing. The duration of the settlement has, therefore, come and gone. The government is now free to issue additional RFQs.

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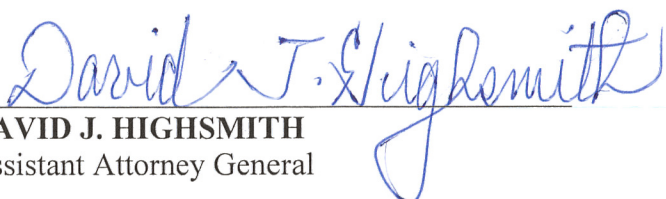
The Settlement Agreement calls itself a “full and final settlement of” several old OPA cases. It does not purport to be a settlement of the resulting court case. Indeed, as an order from an administrative agency, it could not be. The parties are still waiting for a resolution of GSA-IFB-064-11. Until that resolution occurs in court, this case is not ripe for adjudication. The OPA rules wisely provide for OPA deference to court proceedings, although this situation is a little unusual. *See* G.A.R.R. 12103(b).

This procurement was intended to create a faster internet connection between the Office of Technology, part of the Department of Administration, and the Governor’s Office. This connection is only a small part of the procurement in 064-11, which was a general procurement of internet services for the government. In the four years since 064-11 was resolved, internet technology has advanced at dizzying speeds. It now includes something called “dark fiber”, which is different from more conventional fiber optics. Dark fiber is new technology and was not included in the 064-11 procurement. It is faster and has greater capacity than the older technology in question.

This procurement, therefore, is outside the scope of the settlement in GSA-IFB-064-11 because it is intended to acquire a newer and better way of providing the same service. It makes no sense to handcuff the government to older technology. The appeal should be denied.

Respectfully submitted this 13th day of May, 2015.

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By: 
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