



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

June 24, 2014

Claudia S. Acfalle  
Chief Procurement Officer  
General Services Agency  
Department of Administration  
148 Route 1 Marine Drive  
Piti, Guam 96915  
**VIA FACSIMILE: (671) 475-1727 / 472-4217**

Re: Notice of Receipt of Appeal – OPA-PA-14-006

Dear Ms. Acfalle,

Please be advised that Pacific Data Systems, Inc. (PDS) filed an appeal with the Office of Public Accountability (OPA) on June 24, 2014 regarding the General Services Agency (GSA) procurement actions related to GSA-064-11 for Telephone Services for the Guam Fire Department and Department of Public Health and Social Services. OPA has assigned this appeal case number OPA-PA-14-006.

Immediate action is required of GSA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at [www.guamopa.org](http://www.guamopa.org). The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required. However, we recognize that the procurement record for IFB No. GSA-064-11 was previously submitted in procurement appeal case number OPA-PA-12-011 on May 24, 2012, and subsequently supplemented in OPA-PA-12-012, OPA-PA-12-016, OPA-PA-12-017, and OPA-PA-12-018. OPA understands that the procurement record is voluminous, and to increase efficiency, OPA will not require a duplicate copy of the record filed in OPA-PA-12-011. In order to ensure the completeness of the procurement record, OPA requires

GSA to certify that the procurement record that was submitted for GSA-064-11 is complete in its entirety, will be the same procurement record for OPA-PA-14-006, and to re-submit all supplements to the procurement record from May 24, 2012 to present by **Tuesday, July 1, 2014**, five work days following receipt of this notice of appeal.

We also require one copy of the Agency Report for the procurement solicitation cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §§12104(c)(3) and 12105, by **Monday, July 14, 2014**, twenty days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to Pacific Data Systems, Inc. OPA respectfully asks that GSA provide one original and two copies of the procurement record as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact me at 475-0390 ext. 204, or [rgerardo@guamopa.org](mailto:rgerardo@guamopa.org), should you have any questions regarding this notice.

Sincerely,



Rodalyn Gerardo  
Audit Supervisor

Enclosure: Notice of Appeal – OPA-PA-14-006

Cc: John Day, President for Pacific Data Systems, Inc. (PDS)



**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 6/24/14  
TIME: 10:50  AM  PM BY: AG  
FILE NO OPA-PA: 14-00678

**Appendix A: Notice of Appeal Form**  
**PROCUREMENT APPEAL**

**PART I- To be completed by OPA**

In the Appeal of )

) **NOTICE OF APPEAL**

Pacific Data Systems, Inc (PDS)  
(Name of Company), APPELLANT )

) Docket No. OPA-PA \_\_\_\_\_  
)  
)

.....  
**PART II- Appellant Information**

Name: Pacific Data Systems, Inc (PDS)

Mailing Address: 185 Ilipog Drive, Suite 204A  
Tamuning, GU 96913

Business Address: same as above

Email Address: John@pdsguam.com

Daytime Contact No: 671-300-0202

Fax No.: 671-300-0265  
.....

**PART III- Appeal Information**

A) Purchasing Agency: General Services Agency (GSA)

B) Identification/Number of Procurement, Solicitation, or Contract: PO146A01053,  
PO146A01072 issued under Procurement GSA-064-11

C) Decision being appealed was made on June 9, 2014 (date) by:  
 GSA Acting Chief Procurement Officer \_ Director of Public Works \_ Head of Purchasing Agency

*Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.*

D) Appeal is made from:

*(Please select one and attach a copy of the Decision to this form)*

Decision on Protest of Method, Solicitation or Award

Decision on Debarment or Suspension

Decision on Contract or Breach of Contract Controversy  
(Excluding claims of money owed to or by the government)

Determination on Award not Stayed Pending Protest or Appeal  
(Agency decision that award pending protest or appeal was necessary to protect the  
substantial interests of the government of Guam)

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

- **Not Applicable**

*Appendix A: Notice of Appeal Form*  
**PROCUREMENT APPEAL**

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**PART IV- FORM AND FILING**

This is a Procurement Appeal by Pacific Data Systems (PDS) of a contract controversy under §12301(a) related to a decision to terminate services made by General Services Agency (GSA) for two GSA Purchase Orders; 146A01053, 146A01072. It is the position of PDS that the termination of these services by GSA is unwarranted and not supported by the facts.

The following is a chronology of this contract controversy:

On May 3, 2012, PDS was awarded the voice services parts of a GSA Invitation For Bid (IFB) procurement done for Telecommunications Services; GSA-064-11. The award by GSA of these services to PDS via this procurement has been sustained through a protest and appeal to the OPA (OPA-PA-13-016), and subsequent appeal of the OPA decision to the Superior Court (CV0333-13).

The two GSA Purchase Order's at issue; 146A01053, 146A01072, were received by PDS on November 21, 2013 (see Exhibit A). These PO's covered the delivery of Voice Services to various offices and locations for the Guam Fire Department and Department of Public Health and Social Services. The delivery of these services were governed by the terms and conditions of the GSA IFB GSA-064-11 which specified that 50% of the services would be delivered in 90 days, 75% of the services would be delivered within 120 days, and 100% of all services would be delivered in 150 days of the receipt of the Purchase Order.

On December 13, 2013, Teleguam Holdings, LLC (GTA) filed a motion alleging contempt of court against PDS and GSA related to the issuance by GSA of these PO's (see Exhibit B). It was decided by PDS and GSA that during the pendency of this motion, that all work on the installation of the new voice services should be suspended.

On January 9, 2014, a hearing was held in the Superior Court of Guam on the GTA Motion for Contempt (see Exhibit C) and a decision was issued by the Superior Court dismissing the motion on March 10, 2014 (see Exhibit D). PDS resumed the installation of the services related to these Purchase Orders once receiving the decision dismissing the challenge filed by GTA.

On April 22, 2014, PDS provided an update to GSA regarding the status of the installations for all Government of Guam Agencies and Departments for which PDS had received PO's for new Voice Services (see Exhibit E). This letter requested that GSA confirm the revised delivery schedule for the new PDS services due to excusable delays associated with the GTA Contempt of Court Motion and PDS provided documentation supporting a delay of 87 days related to the resolution of this issue. PDS has yet to receive a decision from GSA regarding this request and on June 20, 2014 filed an Appeal under §12301(a) with the OPA related to this contract controversy (reference OPA-PA-14-005).

**Appendix A: Notice of Appeal Form**  
**PROCUREMENT APPEAL**

On May 30, 2014, GSA issued two Default Notices to PDS covering PO's 146A01053, 146A01072 (see Exhibit F). On June 2, 2014, GSA issued another Default Notice to PDS covering PO 146A01053 (see Exhibit G). PDS responded to these Default Notices in letters to GSA dated June 9, 2014 (see Exhibit H).

On June 10, 2014, GSA sent PDS a Memoranda Terminating GSA Purchase Orders 146A01053, 146A01072 (see Exhibit I). The GSA Memo stated that the PDS services were being terminated based on PDS's failure to timely deliver the Voice Services specified under these PO's.

On June 11, 2014, PDS sent GSA a letter (see Exhibit J) requesting that GSA reconsider its decision terminating services and provided GSA with a response showing that PDS had complied with the terms of the Purchase Orders and was scheduled to have all services delivered within the Default Notification period specified in the GSA Default Notice of June 2, 2014; though it was PDS' position that the deadline for the delivery of all of the services had not lapsed due to previously documented excusable delays that PDS had communicated to GSA (see Exhibit E).

On June 11, 2014, after 5pm PDS began the process of terminating the PDS services covered by GSA Purchase Orders 146A01053, 146A01072 based upon the termination memoranda received by PDS from GSA on June 9, 2014.

On June 11, 2014, PDS received a notice from GSA reallocating funds from PO 146A01072 (see Exhibit K).

On June 13, 2014, GSA sent PDS a letter reference GSA PO 146E00286) for which PDS had no matching PO for this PO number (see Exhibit L). However, the GSA letter contained attachments referring to GSA PO 146A01053, and PDS assumed that this letter was actually a partial response by GSA to the letter that PDS had written to GSA on June 10, 2014. No mention is made of the PO 146A01072 in this GSA letter.

**RULING REQUESTED BY THE OPA IN THIS APPEAL:**

- A. PDS seeks a *de novo* review of the contract controversy in this matter. Specifically, PDS requests that the OPA review the termination by GSA of Purchase Orders 146A01053, 146A01072. It is the position of PDS that the termination of these Purchase Orders and services by GSA was invalid, without justification, and an illegal act contrary to Guam Procurement Law and Regulations. The facts show that PDS was complying with the terms of the procurement related to the delivery of the Voice Services covered by these GSA Purchase Orders. Rather than being late, PDS was actually ahead of the delivery timeline allowed under the procurement.
- B. PDS requests an order from the OPA that rescinds the GSA termination of these services and requires reissuance of new Purchase Orders for PDS to reestablish the services. PDS

*Appendix A: Notice of Appeal Form*  
**PROCUREMENT APPEAL**

requests that such an order state that PDS shall have the original installation timelines (90 to 150 days) to re-install the services once GSA issues the new Purchase Orders as required.

- C. In order to determine the facts regarding the GSA's decision to terminate the PDS Voice Services, PDS requests that the OPA grant a period of time to allow PDS to conduct discovery and deposition of various Government Departments/Agencies and Personnel.
- D. PDS seeks a decision on the excusable delays that PDS has documented in this procurement. These delays were due to legal actions filed by the losing bidder, and were outside the control of PDS. GSA's decisions clearly have ignored these documented excusable delays and a clear decision on this issue needs to be made in order to prevent further confusion on this matter going forward.
- E. PDS requests reimbursement of any and all applicable costs as may be determined by the OPA in this matter including the cost for the reinstallation of all terminated services and any applicable costs, such as attorney fees, or damages that PDS may have incurred due to the invalid and unlawful termination of the PDS services by GSA.
- F. PDS requests that a hearing be held on this matter at the earliest opportunity.

**SUMMARY OF SUPPORTING EXHIBITS ATTACHED HERETO:**

- Exhibit A: November 21, 2013, GSA issued Purchase Orders for new PDS Voice Services: 146A01053 for Guam Fire Department, 146A01072 for Department of Public Health and Social Services
- Exhibit B: December 13, 2013, Teleguam Holdings, LLC (GTA) Motion alleging Contempt of Court against PDS and GSA related to the issuance by GSA of Purchase Orders to PDS under GSA IFB GSA-064-11
- Exhibit C: Evidence of January 9, 2014, Hearing at the Superior Court of Guam on the GTA Motion for Contempt
- Exhibit D: March 10, 2014, Decision issued by the Superior Court dismissing the GTA Motion
- Exhibit E: April 22, 2014, Letter from PDS to GSA providing an update to GSA regarding the status of the installations for all Government of Guam Agencies and Departments for which PDS had received PO's for new Voice Services and seeking GSA's decision regarding excusable delays caused by GTA Contempt of Court Motion.
- Exhibit F: May 30, 2014, GSA Default Notices to PDS covering PO's 146A01053, 146A01072

*Appendix A: Notice of Appeal Form*  
**PROCUREMENT APPEAL**

- Exhibit G: June 2, 2014, GSA Default Notice to PDS covering PO 146A01053
- Exhibit H: June 9, 2014, PDS response to GSA Default Notices
- Exhibit I: June 10, 2014, GSA Memoranda to PDS Terminating GSA Purchase Orders 146A01053, 146A01072
- Exhibit J: June 11, 2014, PDS letter to GSA regarding GSA Termination of PO's 146A01053, 146A01072
- Exhibit K: June 11, 2014, GSA Notice to PDS reallocating funds from PO 146A01072
- Exhibit L: June 13, 2014, GSA letter to PDS reference GSA PO 146E00286)

**PART V – DECLARATION REGARDING COURT ACTION**

The undersigned party does hereby confirm that to the best of his knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 24th day of June, 2014.

By: 

\_\_\_\_\_  
APPELLANT – Pacific Data Systems  
by John Day, its President



## TRANSACTION REPORT

JUN/24/2014/TUE 03:45 PM

## BROADCAST

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	JUN/24	03:33PM	4751727	0:03:20	8	MEMORY OK	ECM 1177
002		03:34PM	4724217	0:03:26	8	MEMORY OK	ECM 1177
003		03:36PM	3000265	0:03:49	8	MEMORY OK	G3 1177
TOTAL				0:10:35	24		

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<b>To:</b>	<b>Claudia S. Acfalle</b> Chief Procurement Officer General Services Agency	<b>From:</b>	<b>Doris Flores Brooks</b> Guam Public Auditor Office of Public Accountability
<b>Phone:</b> <b>Fax:</b>	(671) 475-1707 (671) 475-1727 / 472-4217	<b>Pages:</b>	8 (including cover page)
<b>CC:</b>	<b>John Day</b> President Pacific Data Systems, Inc.	<b>Date:</b>	June 24, 2014
<b>Phone:</b> <b>Fax:</b>	(671) 300-0200 (671) 300-0265	<b>Phone:</b> <b>Fax:</b>	475-0390 x. 204 472-7951

**Re:** OPA-PA-14-006 Notice of Receipt of Appeal

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Rodalyn Gerardo  
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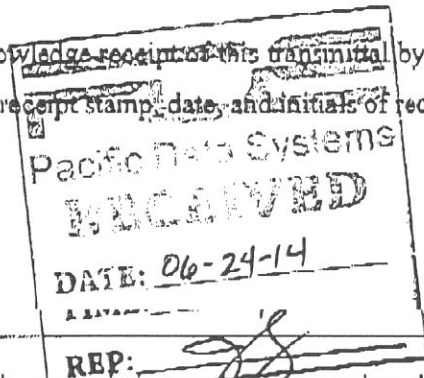
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