

Suite 401 DNA Building  
 238 Archbishop Flores St.  
 Hagåtña, Guam 96910



# FAX

<b>To:</b>	<b>Mr. Jermaine Alerta</b> Executive Director Guam Legislature Guam Congress Building 163 Chalan Santo Papa Hagatna, Guam 9610	<b>From:</b>	<b>Doris Flores Brooks</b> Guam Public Auditor Office of Public Accountability
<b>Phone:</b> <b>Email:</b>	(671) 472-2461 alerta.jermaine@gmail.com	<b>Pages:</b>	5 (including cover page)
		<b>Date:</b>	April 13, 2017
		<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 208 (671) 472-7951
<b>CC:</b>	<b>Mr. John Day</b> President Pacific Data Systems, Inc. (PDS) Appellant		
<b>Phone:</b> <b>Fax:</b>	(671) 300-0202 (671) 300-0265		

**Re:** OPA-PA-17-005 Decision Dismissing Appeal

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

**PROCUREMENT APPEALS**

IN THE APPEAL OF,

**APPEAL NO: OPA-PA-17-005**

PACIFIC DATA SYSTEMS, INC.,

**DECISION DISMISSING APPEAL**

Appellant

To: **Purchasing Agency:**  
34<sup>th</sup> Guam Legislature, Government of Guam  
C/O Julian Aguon, Esq.  
Legislative Counsel  
194 Hernan Cortez Ave., Suite 216  
Hagåtña, Guam, 96910  
Email: guamlegislativecounsel@gmail.com

**Appellant:**  
John Day, President  
Pacific Data Systems, Inc.  
185 Illipog Drive, Suite 204A  
Tamuning, Guam, 96913  
Facsimile: (671) 300-0265

**THIS MATTER**, came before the Public Auditor on March 31, 2017 pursuant to the Appellant's request to withdraw and cancel its procurement appeal because the Purchasing Agency plans on canceling the solicitation at issue in this appeal. After reviewing the Appellant's request, the Public Auditor hereby FINDS and ORDERS the following:

1. The Public Auditor does not have the jurisdiction to hear this appeal. Generally, the Public Auditor shall have the power to review and determine *de novo* any matter properly submitted to her. 5 G.C.A. §5703. Hence, for this matter to be properly submitted before the Public Auditor, Guam's Procurement Law must apply to the Guam Legislature and this issue requires a careful review of the application of Guam's Procurement Laws and Regulations. Guam's procurement law is found in 5 G.C.A., Chapter 5, and this chapter applies to every

1 expenditure of public funds irrespective of their source, including federal assistance funds, acting  
2 through a governmental body, under any contract except that 5 G.C.A., Chapter 5 shall not apply  
3 to either grants or contracts between the Government of Guam and another Government. 5  
4 G.C.A. §5004(b). The term governmental body as used in 5 G.C.A., Chapter 5 means any  
5 department, commission, council, board, bureau, committee, institution, agency, government  
6 corporation, authority, or other establishment, or establishment, or official of the executive  
7 branch of the Government of Guam, except for the Government of Guam Retirement Fund, the  
8 Guam Community College, the University of Guam, the Department of Education, and the Guam  
9 Memorial Hospital. 5 G.C.A. §5030(k) and 2 G.A.R., Div. 4, Chap. 1, §1106(11). Every  
10 governmental body which is in the purview of the Executive Branch, and including the  
11 Government of Guam Retirement Fund, Guam Community College, the University of Guam, the  
12 Department of Education, the Guam Memorial Hospital Authority, the Guam Economic  
13 Development and Commerce Authority, and the Guam Visitor's Bureau, shall be governed by  
14 Articles 1, 3, 6, 7, 10, 11, and 12 of 5 G.C.A., Chapter 5, except to the extent that any such  
15 governmental body or other above named body may be exempted from the centralized  
16 procurement regime set forth in 5 G.C.A., Article 2, Chapter 5, in which event the Director of  
17 each such governmental body or other above named body shall be substituted wherever there is  
18 reference to the Public Policy Office, Chief Procurement Officer, or Director of Public Works in  
19 Articles 4,5,8, and 9 of 5 G.C.A., Chapter 5. 5 G.C.A. §5125. Therefore, Guam's Procurement  
20 Law and regulations apply to the Executive Branch of the Government.

21 However, the Guam Legislature is not part of the Executive Branch but a separate and co-  
22 equal branch of the Government of Guam. The legislative power and authority of Guam shall be  
23 vested in a legislature, consisting of a single house, to be designated the "Legislature of Guam."  
24 48 U.S.C. §1423(a). Further, the Guam Legislature is authorized to create its own standing rules  
25 and these standing rules in force and existence at the adjournment *sine die* of a legislature shall  
26 continue until changed and shall govern the organization of the next legislature. 1 G.C.A. §1114.  
27 Embodied in the Guam Legislature's existing standing rules, are the rules governing the Guam  
28 Legislature's procurement and supply. Rule XVII, Standing Rules, 34<sup>th</sup> Guam Legislature  
(Hereafter Referred to as: "Standing Rules"). Further, the standing rules expressly and

1 specifically state that no procurement of supplies or services shall be made, except in accordance  
2 with these rules, and where authorized herein, with conditions and requirements prescribed by  
3 the Purchasing Agent. Rule XVII, Section 17.06(a), Standing Rules. Therefore, the Public  
4 Auditor finds that Guam Procurement Laws, as codified in 5 G.C.A. §5001, *et,seq*, and Guam’s  
5 Procurement Regulations, as codified in 2 G.A.R., Div. 4, Chap. 1, §1101, *et,seq.*, do not apply  
6 to the 34<sup>th</sup> Guam Legislature because it is a separate and co-equal branch of the Government of  
7 Guam, and because it is not part of the Executive Branch or a Governmental Body of the  
8 Executive Branch of the Government of Guam. The Public Auditor must now review whether  
9 the 34<sup>th</sup> Guam Legislature’s Standing Rules authorize procurement appeals to the Public Auditor.

10 The standing rules do not authorize the Appellant to appeal the 34<sup>th</sup> Guam Legislatures  
11 denial of its procurement protest to the Public Auditor. A review of Rule XVII, Standing Rules,  
12 does not authorize the Appellant to either file a protest, or to appeal the 34<sup>th</sup> Guam Legislature’s  
13 denial of its protest to the Public Auditor. Hence, the Public Auditor finds, pursuant to 5 G.C.A.  
14 §5703 that she does not have the jurisdiction of hear the Appellant’s appeal because it is not  
15 properly before her.

16 2. Accordingly, pursuant to 2 G.A.R., Div. 4, Chap. 12, §12104(c)(8), the Public  
17 Auditor hereby DISMISSES this matter with PREJUDICE.


18 3. This is a Final Administrative Decision. The Parties are hereby informed of their  
19 right to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in  
20 accordance with Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a  
21 Final Administrative Decision. 5 G.C.A. §5481(a).

22 4. A copy of this Decision shall be provided to the parties and their respective

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1 attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on the  
2 OPA Website [www.opaguam.org](http://www.opaguam.org).

3  
4 **SO ORDERED** this 13<sup>th</sup> day of April, 2017.

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6 \_\_\_\_\_  
7 DORIS FLORES BROOKS, CPA, CGFM  
8 PUBLIC AUDITOR

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Jerrick Hernandez <jhernandez@guamopa.com>

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## OPA-PA-17-005 Decision Dismissing Appeal

1 message

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**Jerrick Hernandez** <jhernandez@guamopa.com>

Thu, Apr 13, 2017 at 2:17 PM

To: jalerta1 <alerta.jermaine@gmail.com>

Hafa Adai Mr. Alerta,

Please see attached Decision Dismissing appeal.

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Regards,

**Jerrick J.J.G. Hernandez, CGAP, CICA**

Auditor

Office of Public Accountability – Guam

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